IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1960

No._____

CECIL C. CLARK and CATHERINE CLARK,
husband and wife, *Appellants,*

vs.

JOE DWYER, Director of Agriculture
of the State of Washington, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

CUTLER W. HALVERSON
303 East "D" St., Yakima, Wash.

ALAN A. McDONALD
303 East "D" St., Yakima, Wash.
Attorneys for Petitioners
Cecil C. Clark and Catherine Clark

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OPINIONS IN COURTS BELOW

The opinion of the Supreme Court of the State of Washington has been officially reported as Vol. 156, Washington Decisions, No. 12, p. 440; Petition for Rehearing Denied, Vol. 156, Wash. Dec. No. 18, p. 557. It is printed as Appendix A to this petition. The decision of the Superior Court of the State of Washington was embodied in an order overruling the demurrer which is contained in the transcript on file herein and no opinion was written in connection therewith.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The opinion and judgment of the Washington State Supreme Court sought to be reviewed was dated and filed June 30, 1960. A petition for re-hearing was denied August 19, 1960.

Section 1257 (2) of Title 28, United States Code, Act of June 25, 1948, c. 646, 62 Stat. 929, is believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari.

QUESTIONS PRESENTED FOR REVIEW

The Appellants present the following questions for review.

I.

Is there today, any limitation upon the ends a state may seek to accomplish by use of its police power?

II.

Is the term "general welfare," as used in the traditional classification of the police power, *i.e.*, that power exercised by the state for the protection of the health, safety, morals and general welfare of its people, a generic term related to the objects preceding it, or, does it mean that the state can deprive an individual of his property when the only claimed benefit is the improvement of the state's competitive and commercial position and which admittedly bears no relation other than that to the general welfare of the state?

III.

Can a state permit the sale of a green apple and forbid the sale of a red one, admitting that there is no other difference between the two, conceding that both are equally fit, edible and nutritious and alike in every other respect, solely on the basis that its apple industry might possibly be aided by such action?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States of America, which provides in part:

> "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

is directly involved in this decision.

Article 1, Section 8, of the United States Constitution, which provides, *inter alia:*

> "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;"

is likewise involved.

The interpretation of the aforementioned constitutional provisions are brought to bear upon the validity of Chapter 230 of the Laws of 1959, Laws of the State of Washington, and R.C.W. 15.16.080, as amended.

STATEMENT OF THE CASE

Petitioners, husband and wife, have been for many years and now are engaged in the business of growing red and partial red varieties of apples in the Yakima Valley, State of Washington. The apples grown by them in substantial quantities have been packed, shipped and sold in interstate commerce. They bring this action for and on behalf of many others similarly situated and engaged.

The facts alleged in Petitioners' amended complaint and all reasonable inferences to be drawn therefrom were admitted by Respondent by the interposing of his demurrer thereto and election to stand thereon. Those admitted allegations are briefly summarized:

The State of Washington produces and ships more apples than any other state in the United States. According to the figures released by the State of Washington, Department of Agriculture, there were produced in the State in the year 1957 approximately 33,000,000 bushels of apples of a value of about $73,000,000.00. In the year 1958 there were produced approximately 30,000,000 bushels of a value of about $75,000,000.00, and a similar production in 1959. Of the apples produced in the State of Washington in the years 1957, 1958 and 1959, approximately 95 per cent were of the red and partial red varieties, and 5 per cent of the green and yellow varieties. The production of the green and yellow varieties is on the increase.

All varieties of apples produced in the State of

Washington prior to the enactment of Chapter 230, Session Laws of 1959, the statute challenged by Petitioners, were marketed and shipped as "Washington Extra Fancy," "Washington Fancy," and "Washington "C-grade." The grade of the apples is determined at time of packing and a substantial quantity of the apples shipped have been the "Washington C-Grade" red and partial red varieties. During the 1957-58 crop year there were approximately 4,250,000 boxes of C-Grade apples of the red and partial red varieties produced and shipped in the course of interstate commerce. That for the crop year 1958-59, there were approximately 2,500,000 boxes of C-Grade apples of the red and partial red varieties available for shipment. As of May 23, 1959, all of the 1958-59 C-Grade apples of the red and partial red varieties were shipped in interstate commerce except approximately 264,708 boxes which remained on hand and were shipped in due course of business in the course of interstate commerce. The price of the C-Grade red and partial red varieties of apples during the crop years 1957-58 and 1958-59 was generally $2.00 per box or more.

Weather conditions are largely responsible for the production of C-Grade apples, as the basic difference between a C-Grade of the red and partial red varieties and an Extra Fancy or Fancy is the color. The C-Grade has less color than the Extra Fancy and Fancy and the Fancy has less color than the Extra Fancy. The color difference is not a result of inferior farming or growing practices. The red and partial

red varieties of apples mature earlier in the season generally on the lower elevations and in the more southerly parts of the state and therefore have less opportunity to color. In these areas substantially larger quantities of C-Grade apples of the red and partial red varieties are produced than in areas of higher elevation and consequently later maturity.

A substantial quantity of red and partial red varieties of apples produced by Petitioners were classified as C-Grade prior to the passage of Chapter 230, Session Laws of 1959, the specifications for which, as heretofore established by the Director of Agriculture, were among other things:

> "Apples of one variety which are mature, hand picked, clean, not badly misshapen, sound and free from serious damage by hail or punctures."

C-Grade apples, including the red and partial red varieties are wholesome and healthful and they store and ship as well as Extra Fancy and Fancy. They are good to eat, cook and use for human consumption. The shipping and marketing of C-Grade apples of the red and partial red varieties in the manner heretofore allowed is in no way detrimental to public safety, health, morals or convenience and does not constitute a fraud upon the public.

We stress again that these facts are admitted!

The Director of Agriculture pursuant to R.C.W. 15.16.010, has heretofore promulgated certain standards for apples which were in effect prior to the enactment of Chapter 230, Session Laws of 1959, which include the standards for C-Grade apples of

the red and partial red varieties. The standards promulgated and adopted by the Director were attached as an exhibit to the amended complaint of Petitioners and consequently admitted under the demurrer.

The Legislature of the State of Washington enacted Chapter 230, Session Laws of 1959, and it was signed by the Governor on March 23, 1959. It reads as follows:

> "Section 1. Section 1, Chapter 222, Laws of 1939, and RCW 15.16.080 are each amended to read as follows:
>
> The director shall adopt and promulgate rules and regulations establishing the following grades of apples: For green and yellow varieties: (1) Extra fancy, (2) fancy, (3) C grade, (4) culls, and (5) infected culls. For red and partial red varieties: (1) Extra fancy, (2) fancy, (3) culls, and (4) infected culls.
>
> No person shall pack, sell, or ship apples unless the same comply with the rules, regulations and grades adopted pursuant to RCW 15.16.010.
>
> Sec. 2. There is added to Chapter 15.16 RCW a new section to read as follows:
>
> The director when establishing standards of color requirements for red varieties and partial red varieties of apples shall establish color standards for such varieties which are not less than the following:

1. Arkansas Black	Fifteen percent
2. Spitzenburg (Esopus)	Fifteen percent
3. Winesap	Twenty percent
4. King David	Fifteen percent
5. Delicious	Twenty percent
6. Staymen Winesap	Ten percent
7. Vanderpool	Ten percent
8. Black Twig	Ten percent

9. Jonathan	Ten percent
10. McIntosh	Ten percent
11. Rome	Ten percent
12. Red Sport varieties	Twenty percent

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties.

Sec. 3. The effective date of this act shall be August 1, 1959."

The color requirements set forth in Section 2 of the act apply to the Fancy grade of the red and partial red varieties. By eliminating C-Grade apples of the red and partial red varieties and by decreasing by 5 per cent the color requirements for the Fancy Grade the enactment of Chapter 230 results in at least 66⅔ per cent of the former C-Grade apples of the red and partial red varieties being classified as Culls. That such cull classification allows retail shipment and marketing of said apples only in marked bushel baskets in conformity with R.C.W. 15.16.160 which reads as follows:

> 15.16.160 APPLES—CONTAINER MARKINGS —CULLS. No person shall buy, sell, offer for sale, ship, or transport any apples to or for market unless the same have been graded and comply with all grading requirements; and if the apples are culls, unless every container, label, bill of lading, invoice, memorandum and other document describes and defines their grade, variety and size; nor ship or transport culls out of their area of production, except to processing plants, unless they are packed in one-bushel baskets, ring-faced and lidded, and the name "culls" appears on the top and bottom of each container and any labels thereon in clear, legible letters at least two and one-half inches high.

> Apples in the ring-face shall be represenative of the contents, as to size and quality.

The elimination of C-Grade by the classification thereof as culls as required by Chapter 230, decreases their market value in that they can only be sold to processors as culls, or in accordance with R.C.W. 15.16.160. The market price in either case is 75 per cent less than it would be if the apples were sold as C-Grade.

The Director of Agriculture of the State of Washington is charged with the enforcement of Chapter 15.16 R.C.W., which includes Chapter 230, Session Laws of 1959, eliminating C-Grade apples of the red and partial red varieties and it is admitted that Petitioners will be prosecuted criminally if they violate Chapter 230 by the sale of the C-Grade apples contrary to the provisions of said law. It is further admitted that the enforcement of said law will irreparably damage Petitioners by depriving them of valuable property and property rights contrary to the provisions of the state and federal constitutions (Tr. 9 to 16).

Based on the facts above set forth, Petitioners alleged two causes of action. The first cause was for a declaratory judgment, declaring the statute unconstitutional and, the second cause of action was for a restraining order *pendente lite* and for a permanent injunction permanently enjoining the Respondent from enforcing said chapter.

Respondent demurred to Petitioners' amended complaint (Tr. 17-18) and after hearing and argu-

ment. Respondent's demurrer was overruled (Tr. 20). Respondent elected to stand on his demurrer and not plead further with the result that judgment was entered declaring Chapter 230 unconstitutional and permanently enjoining Respondent from enforcing said law (Tr.-21). From this decision, Respondent appealed and the Supreme Court of the State of Washington reversed the decision of the trial court.

REASONS FOR GRANTING THE WRIT

The decision of the Washington State Supreme Court should be reviewed because it presents to this final appellate body the opportunity to decide whether or not there is today any actual limitation upon what a state may do in the regulation of human endeavor in the name of its police powers.

That the precise question cries for answer, must be recognized by every constitutional student. It is submitted that the issue could not be presented with more dramatic simplicity than it is in the case at bar.

A farmer in south central Washington grows apples for a living. Because the nights there are more moderate than in the country of his counterpart to the north, the apples that he grows do not get quite as red. This is the only difference. The apples are equally delicious and nutritious; they cook, ship and store equally well and there is absolutely nothing in the color differential which is detrimental to the public safety, health or morals or which does in anywise constitute a fraud upon the public.

The State of Washington, admitting all this, none-

theless has decided that the competitive position of its apple crop in foreign markets would be improved if only the red apples are marketed. In its wisdom it declares a color line and provides that the sale of all apples falling below it shall be, as a practical matter, prohibited. The result, of course, for the farmer and all those similarly engaged is a disastrous deprivation of his livelihood.

Where then is the limit on the police power of a state? Recognizing the difficulty, or for that matter, the undesirability of exactly defining the scope of the police power, conceding that in the exercise of its police power the state has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace and good order of its people, *East New York Savings Bank v. Haan*, New York, 66 S. Ct. 69, 326 U. S. 230, 90 L. Ed. 34, agreeing that the police power is one of the least limitable of the powers of government, *Queenside Hills Realty Company v. Saxl*, New York, 66 S. Ct. 850, 328 U. S. 80, 90 L. Ed. 1096, that the phrase is not to be limited by narrow connotations; *Indianapolis Brewing Company v. Liquor Control Commission at Michigan*, D. C. Mich., 21 Fed. Sup. 1969, affirmed 59 S. Ct. 254, 305 U. S. 391, 83 L. Ed. 243—nonetheless, if a state can substitute its judgment of what is good for business, for the judgment of the people in that business, deprive a man of his property in doing so and justify this deprivation by simply labeling its activity as an exercise of police power, then it must

be agreed that there is no point at which the all consuming power of the state must yield to the rights of the individual.

Nor can this awesome conclusion be avoided with the generality that the means employed by the state in the exercise of its power must be reasonable. Once the premise is accepted that the State of Washington can legitimately regulate for a strictly mercantile purpose, then it must follow that the means in the case at bar, the prohibition of the sale of partially red apples, is, at least, remotely related with some reasonableness to achieving that purpose.

Likewise, if the premise is accepted that this is a legitimate end of a state's legislative activity, then it must follow that the state in its wisdom could decide that the Washington pear crop would be advantageously assisted in the market by the prohibition of the sale of all apples. Again, one would have to concede that such a means was reasonably related to achieving the end.

Thus, the issue is narrowed, for, if the state is completely unrestricted as to the areas in which it may legislate in the name of the police power, its choice of means to achieve that purpose can always be justified as bearing some relationship to accomplishing the object of the legislation. Certainly, the classification requirement, which we so often concern ourselves under the equal protection provision of the Fourteenth Amendment, will cease to be an important barrier for individual rights and liberties.

Keep in mind that in the legislation involved in

the court below, that there is no pretense; no claim that the object of the legislation is to protect public health such as concerned the court in the case of *Nebbia v. People of the State of New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505.

The demurrer admits that the legislation was in nowise aimed at improving standards to prevent fraud or protect the public from unfit or deleterious fruit as was the case in *Sligh v. Kirkwood*, 237 U. S. 52, 59 L. Ed. 835, 35 S. Ct. 501. (A fact which the court below blithely ignored.)

Nor is the objective of the act related to the prevention of disease in the apple industry as was reviewed in *Miller v. Schoene* (1926), 146 Va. 175, 135 S. E. 813, aff'd. 276 U. S. 272, 72 L. Ed. 568, 48 S. Ct. 246.

Here, without any subterfuge, the State of Washington is asserting its right to deprive an individual of his business and property on the basis that it can legislate, within the scope of its police power, in the economic area, without relation to social or economic evils aside from the competitive status of the apple industry itself.

One is tempted to submit that a sufficient reason for granting this writ is the marked conflict of the decision of the Washington State Supreme Court with the decision of this court as found in two recent cases dealing with the impact of similar legislation under the commerce clause. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U. S. 511, 79 L. Ed. 1032, 55 S. Ct. 497; *Hood v. DuMond*, 36 U. S. 525, 93 L. Ed. 865. There is no difference essentially in the object of the legis-

lation in the case at bar and the legislation involved in those cases. Nor, is there any difference, essentially, in the effect of the legislation upon interstate commerce. By Chapter 230, Laws of 1959, the State of Washington seeks to improve the competitive position of its apple industry in foreign markets. In plain language, it designs to obtain a higher price for Washington apples by submitting only those of the reddest and most attractive color for sale. By prohibiting the sale of partially red apples or by prejudicing their sale in interstate commerce by requiring them to be branded as "culls," the state may conceivably gain an economic advantage. But look at the effect of its conduct on the purchaser in foreign market. He is practically deprived of an opportunity to buy a product equally good at a lower price. Doesn't this fly in the face of the language of Justice Cardozo to the effect that "neither the power to tax nor the police power may be used . . . with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents." *Baldwin v. G.A.F. Seelig, Inc., supra.*

The practical effect of the legislation under scrutiny is to withhold the sale of apples from export. It is unquestioned that the State of Washington has no right to directly curtail the movement of apples into or out of its state. In no case has our Supreme Court sustained the right of a state to do this unless the measure is supported by health or safety considerations, and in the case of *Hood v. DuMond, supra*, our court expressly held that when the sole argument

advanced to justify the legislation is that it furnishes protection of local economic interests, such attempted regulation is prohibited by the commerce clause. To quote directly from the opinion of Mr. Justice Jackson:

> "It recognized, as do we, broad power in the state to protect its inhabitants against perils to health or safety, fraudulent traders and highway hazards, even by use of measures which bear adversely upon interstate commerce. But it laid repeated emphasis upon the principle that the state may not promote its own economic advantages by curtailment or burdening of interstate commerce."

In the same opinion can be found a rationale stirringly appropriate to the position of Petitioners.

> "Our system, fostered by the commerce clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the nation, that no home embargoes will withhold his export, and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the nation to protect him from exploitation by any. Such was the vision of the founders; such has been the doctrine which has given it reality."

While we consider the foregoing a complete reason not only for granting this petition but for the eventual reversal of the decision of the Supreme Court of the State of Washington, we would point out still an additional attraction for the court to consider this petition favorably.

There is today, a conviction held by many students

of constitutional law, that there is actually no limit to what a sovereign may do in the name of its police powers. The concept is real. The conclusion is disturbing. That it exists can be established by simple reference to the opinion of the court below.

At page 9, the writer of the opinion asserts this remarkable circle:

> "If the legislature can regulate the marketing of these products at all (and, as we have said, it can do so where it finds that it is in the public interest to protect the reputation and welfare of the industry), it can refine those regulations or change them to further the legitimate purposes of the law"!

In fairness to Judge Rosellini, it must be conceded that his position finds some foundation in the development of the law related to this issue through the years of extreme social and economic transition occurring between the early case of *Tyson & Brother-United Theatre Ticket Officers, Inc. v. Joab H. Banton*, 273 U. S. 418, 71 L. Ed. 718, 47 S. Ct. 426, and *Ribnik v. McBride*, 277 U. S. 350, 72 L. Ed. 913, 48 S. Ct. 543, until the full circle from the doctrines expressed therein was accomplished in *Olson v. Nebraska* (1941), 13 U. S. 236, 85 L. Ed. 1305.

In the *Tyson* case, *supra*, Judge Sutherland in detailing his test of a "business vested with a public interest," said as follows:

> "The power to regulate property, services or business can be invoked only under special circumstances and it does not follow that because the power may exist to regulate in some particulars it exists to regulate in others or in all."

After reviewing the development of the police power, he continued:

> "The authority to regulate the conduct of a business or to require a license comes from a branch of the police power and which may be quite distinct from the power to fix prices. The latter, ordinarily does not exist in respect to merely private property or business but exists only where the business or property involved has become 'affected with a public interest'. This phrase, first used by Lord Hale two hundred years ago, it is true, furnishes at best an indefinite standard and attempts to define it have resulted, generally in producing little more than paraphrases which themselves require elucidation. Certain properties and kinds of business it obviously includes, like common carriers, telegraph and telephone companies, ferries, wharfage, etc. Beyond these its application not only has not been uniform, but many of the decisions disclosed to members of the same court in radical disagreement. Its full meaning, like that of many other generalizations cannot be approximately defined;—it can only be approximated.
>
> A business is not affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect to its maintenance. Nor is the interest meant such as arises from the mere fact the public derives benefit, accommodation, ease or enjoyment from the existence or operation of the business; and while the word has not always been limited narrowly as strictly denoting 'a right', that synonym more nearly than any other expresses the sense in which it is to be understood."

No sooner was this doctrine announced than the drift away from it began.

In 1930 the power of the Secretary of Agriculture under the Packers and Stockyards Act to determine the just and reasonable charges of persons engaged in the business of buying and selling interstate commerce livestock at a stockyard on a commission basis was upheld. *Tagg Bros. & Moorehead v. United States*, 280 U. S. 420, 74 L. Ed. 425, 50 S. Ct. 220.

In 1931 a New Jersey statute limiting commissions of agents of fire insurance companies was sustained by *O'Gorman & Young v. Hartford F. Insurance Company*, 282 U. S. 251, 75 L. Ed. 324, 51 S. Ct. 130.

We have already alluded to the case of *Nebbia v. New York*, *supra*, where the fixing of milk prices to hold competitive levels to a point which would permit sanitary handling was upheld. Minimum wages for women and minors were sustained in *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 81 L. Ed. 703, 57 S. Ct. 578. Minimum prices and minimum wage and maximum hour provisions were sustained in *U. S. v. Rock Royal Cooperative*, 307 U. S. 533, 83 L. Ed. 1446, 59 S. Ct. 993, decided in 1939, and in *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 84 L. Ed. 1263, 60 S. Ct. 907, decided a year earlier.

All of these were obviously cases which upheld the states' intervention into the economic area. However, all of these are equally obvious examples of where the end or object of the legislation bore a striking relation to a goal, social or economic, which was desirable apart from the mere merchantile interest of an industry.

The same obvious difference was presented factually in *Olson v. Nebraska, supra.* It takes no great imagination to appreciate that the general welfare of the people of the State of Nebraska was within the purview of a statute which sought to limit the charges of a private employment agency. However, the language used in the latter decision and the doctrine expressed in the following quotation from that opinion gives rise to the fears that exist in the minds of many, that there is no longer a limit to what object or goal the state may seek to achieve under the guise of its police power.

In stating that the court could no longer give continuing vitality to a rule which permitted regulation under the police power of the state only as to those businesses "vitally affected with the public interest," it was said:

> "We are not concerned, however, with the wisdom, need or appropriateness of the legislation. Differences of opinion on that score suggest a choice which 'should be left where . . . it was left by the constitution, to the States and to Congress'."

Note the striking similarity of that language to the excerpt from the opinion of the Washington Supreme Court set forth above! Here, then, is a source of real and vivid concern.

Is this the law? Will the court stand on the statement that it will never inquire behind a legislative declaration that its activity is a valid exercise of the police power? Has the court abdicated the position stated so forcibly in the case of *Mugler v. Kan-*

sas, 123 U. S. 661, 8 S. Ct. 273, 31 L. Ed. 205, wh it said:

> "The courts are not bound by mere forms, r are they to be misled by mere pretense. Th are at liberty—indeed, are under a solemn du —to look at the substance of things whenev they enter upon the inquiry whether the leg lature has transcended the limits of its auth ity. If, therefore, a statute purporting to ha been enacted to protect the public health, t public morals, or the public safety has no re or substantial relation to those objects, or is palpable invasion of rights secured by the fu damental law, it is the duty of the court to adjudge, and thereby give effect to the const tution."

Chapter 230, Laws of 1959 of the State of Washing ton, makes no claim to have been enacted to prote the public health, morals or safety. It asserts no pr tection against fraud, nor does it recite evils flowin from unbridled competition or low prices. It is just fied only in terms that the possibility of its promo ing Washington's apple industry was not preclude by the pleadings. Upon scrutiny its only conceivabl object can be the monetary improvement of a loca industry, achieved by abolishing a part thereof with out any other justif cation for doing so. If Washing ton State can legislate in this field on no other basi than the one suggested, then it can legislate in an field, and, if the court refuses to look beyond a legis lative declaration that in doing so it exercises it police power, if the court considers itself bound by such a declaration, then where is the guarantee to an individual's security in his property? What has hap

pened to the individual's right to pursue the endeavor of his choice so long as it does not unreasonably impose upon his neighbor? If the professed object of a legislature cannot be challenged by this court, to whom will the individual turn?

It is interesting, perhaps ironic, that in the delicate difference of the shade of two apples there should be suspended the age-old question of where the power of the state must yield to the rights of the individual.

In this pastel background, there is set an issue just as real, a right just as basic and vital as those shaded in black and white with which this Court has been so much concerned of late! We earnestly submit it is one which deserves and demands this court's attention.

CUTLER W. HALVERSON
303 East "D" St., Yakima, Wash.

ALAN A. McDONALD
303 East "D" St., Yakima, Wash.
Attorneys for Petitioners
Cecil C. Clark and Catherine Clark

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[illegible] Director of Aeronautics

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CUTLER W. HALVERSON
303 East "D" St., Yakima, Wash.

ALAN A. McDONALD
303 East "D" St., Yakima, Wash.
Attorneys for Petitioners
Cecil C. Clark and Catherine Clark

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APPENDIX "A"

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Respondents*, v. JOE DWYER, as Director of the Department of Agriculture of the State of Washington, *Appellant*.	No. 35280 EN BANC Filed June 30, 1960

The plaintiffs in this action, on behalf of themselves and all others similarly situated, challenge the constitutionality of chapter 230, Laws of 1959, which amends chapter 222, Laws of 1939 (RCW 15.16.080). A demurrer to the complaint was overruled, and, the defendant refusing to plead further, judgment was entered enjoining the defendant, Director of the Department of Agriculture of the State of Washington, from enforcing the provisions of this agreement.

Laws of 1939, chapter 222 § 1, p. 931, provides:

> "It shall be unlawful for any person, firm, corporation, trust, association, co-operative or other business unit or device to pack, ship or sell apples unless such apples are sold, packed and graded in compliance with the general rules and regulations made, adopted and promulgated from time to time by the Director of Agriculture pursuant to section 4 of chapter 27 of the laws of 1931 . . . Within sixty (60) days after the taking effect of this act general rules and regulations shall be adopted and promulgated

defining and establishing the following grades:

"(a) Extra fancy

"(b) Fancy

"(c) C grade

"(d) Culls

"(e) Infested culls."

Section 4, chapter 27, p. 86, Laws of 1931, provided for the promulgation of grading rules only after official public hearings pursuant to such reasonable rules prescribed by the director as should insure a full, fair and impartial opportunity for all interested districts to be heard; and further provided that the grading rules should be based upon the necessities and properties as shown in the hearing, taking into consideration the commercial tonnage of said products in each district affected by said rules. This provision is now contained in RCW 15.16.010.

Chapter 230, p. 1070, Laws of 1959, reads as follows:

"The director shall adopt and promulgate rules and regulations establishing the following grades of apples: For green and yellow varieties: (1) Extra fancy, (2) fancy, (3) C grade, (4) culls, and (5) infected culls. For red and partial red varieties: (1) Extra fancy, (2) fancy, (3) culls, and (4) infected culls.

"No person shall pack, sell, or ship apples unless the same comply with the rules, regulations and grades adopted pursuant to RCW 15.16.-010.

"Sec. 2. There is added to chapter 15.16 RCW a new section to read as follows:

"The director when establishing standards of

color requirements for red varieties and partial red varieties of apples shall establish color standards for such varieties which are not less than the following:

"1. Arkansas Black	Fifteen percent
"2. Spitzenburg (Esopus)	Fifteen percent
"3. Winesap	Twenty percent
"4. King David	Fifteen percent
"5. Delicious	Twenty percent
"6. Staymen Winesap	Ten percent
"7. Vanderpool	Ten percent
"8. Black Twig	Ten percent
"9. Jonathan	Ten percent
"10. McIntosh	Ten percent
"11. Rome	Ten percent
"12. Red Sport varieties	Twenty percent

"Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties."

By § 1 of this act the legislature eliminated the third, or C grade, as to red and partial red varieties of apples, while retaining it as it applies to green and yellow varieties of apples. Section 2, according to the allegations of the complaint in this action, sets minimum color requirements to which the Director of Agriculture may lower existing color requirements of the second, or "fancy," grade of red and partial red varieties of apples. Such minimum color requirements, if adopted, would lower the existing color requirements for "fancy" grade of red and partial red varieties by five per cent.

According to the allegations of the complaint, the apples which have heretofore been graded as "C grade" are as edible and healthful as those which have been graded "fancy" or "extra fancy."

Under the new grading system, two-thirds of the apples formerly designated as C grade will now be classified as culls, while one-third will fall into the "fancy" category. Those which are graded "culls" can, under the provisions of RCW 15.16.160, be sold or shipped only in one-bushel baskets, ring-faced and lidded, with the name "culls" appearing on the top and bottom of each container and any labels thereon in clear, legible letters at least two and one-half inches high.

It was alleged that the state of Washington produces and ships more apples than any other state in the United States; that according to the figures released by the State Department of Agriculture, there were produced in the state in the year 1957, approximately 33,000,000 bushels of apples of a value of about $73,000,000. In the year 1958, there were produced approximately 30,000,000 bushels of a value of about $75,000,000, and a similar production is expected in 1959. Of the apples produced in the state in these years, approximately ninety-five per cent were of the red and partial red varieties, and five per cent were of the green and yellow varieties.

During the 1957-58 crop year there were approximately 4,250,000 boxes of C grade apples of the red and partial red varieties shipped in interstate commerce, and for the crop year 1958-59, there were approximately 2,500,000 boxes of C grade apples of the red and partial red varieties available for shipment. Prior to the effective date of the 1959 amendment, all but 264,708 boxes of these had been shipped

in interstate commerce. The price of C grade red and partial red varieties during the crop years of 1957-58 and 1958-59, was generally $2 a box or more.

Weather conditions and low elevations are largely responsible for the production of apples of C grade of red and partial red varieties; this grade is not primarily a result of inferior farming nor growing practices. C grade apples have less color than have extra fancy and fancy grade apples. (The regulations attached to the complaint reveal that the requirements as to shape and freedom from damage are less strict in the case of C grade apples.) Generally, apples mature earlier in the season at lower elevations and in the more southerly parts of the state and have less opportunity to color; and in these areas substantially larger quantities of C grade apples of red and partial red varieties are produced than in other areas.

It is alleged that the manner heretofore allowed for shipping and marketing C grade apples of red and partial red varieties, is in no way detrimental to the public safety, health, morals, or convenience, nor does it constitute a fraud upon the public. It is further alleged that the classifying of C grade apples as culls would impair their value by prohibiting their shipment in standard boxes and requiring their shipment in bushel baskets.

The validity of the amendment was challenged on several grounds, which were consolidated for the

purposes of argument in this court and set forth as follows:

> "I. That said law violates the equal protection and due process clauses of the State and Federal Constitutions, being Article I., Section 3, and Section 12 of the state Constitution, and the Fourteenth Amendment to the Constitution of the United States.
>
> "II. That said law is an improper, unwarranted and prejudicial extension of the police powers reserved to the State of Washington.
>
> "III. That said law is an unlawful delegation of the legislative authority.
>
> "IV. That said law violates Article I, Section 8 of the Constitution of the United States which is the commerce clause."

The question before the court is: Assuming the allegations of fact contained in the complaint to be true, do they show the 1959 amendment to be an invalid exercise of the police power?

It must be borne in mind that the state constitution is not a grant, but a restriction on the law-making power, and the power of the legislature to enact all reasonable laws is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions. Where the validity of a statute is assailed, there is a presumption of the constitutionality of the legislative enactment, unless its repugnancy to the constitution clearly appears or is made to appear beyond a reasonable doubt. *Port of Tacoma v. Parosa*, 52 Wn. (2d) 181, 324 P. (2d) 438; *In re Bartz*, 17 Wn (2d) 161, 287 P. (2d) 119; *Union High School*

Dist. No. 1 v. Taxpayers of Union High School Dist. No. 1, 26 Wn. (2d) 1, 172 P. (2d) 591. Where possible, it will be presumed that the legislature has affirmatively determined any special facts requisite to the validity of the enactment, even though no legislative finding of fact appears in the statute. *State ex rel. Collier v. Yelle*, 9 Wn. (2d) 317, 333, 115 P. (2d) 373.

As this court said in *Green v. State Tax Comm.*, 35 Wn. (2d) 1, 211 P. (2d) 651, at page 7.

> "It must be remembered that the legislature is the chosen representative of the people. It speaks for them. Under our constitution, the legislature passes laws and repeals laws as the sole representative of the people. . . ."

While the plaintiffs do not question the validity of chapter 222, Laws of 1939, providing for the promulgation of rules establishing grades of apples, they urge that the 1959 amendment, eliminating one of these grades in the case of red and partial red varieties, is not a proper exercise of the police power because it was not enacted to protect the public health or prevent fraud. But, the police power is not as limited as the plaintiffs contend. It has become firmly established that the police power of the state extends not only to the preservation of the public health, safety, and morals, but also to the preservation and promotion of the public welfare. *State v. Sears*, 4 Wn. (2d) 200, 103 P. (2d) 337. As was said in *Shea v. Olson*, 185 Wash. 143, 53 P. (2d) 615, 111 A. L. R. 998:

"However difficult it may be to give a precise

> or satisfactory definition of 'police power,' there is no doubt that the state, in the exercise of such power, may prescribe laws tending to promote the health, peace, morals, education, good order and welfare of the people. Police power is an attribute of sovereignty, an essential element of the power to govern, and a function that cannot be surrendered. It exists without express declaration, and the only limitation upon it is that it must reasonably tend to *correct some evil or promote some interest of the state*, and not violate any direct or positive mandate of the constitution." (Italics ours.)

In *Sligh v. Kirkwood*, 237 U. S. 52, 59 L. Ed. 835, 35 S. Ct. 501, the Supreme Court of the United States was asked to declare unconstitutional a law, enacted by the legislature of the state of Florida, forbidding the shipment of citrus fruits which were immature or otherwise unfit for consumption. It was the contention of the petitioner that the act constituted an undue burden on interstate commerce, and could not be justified as a proper exercise of the police power because it was not calculated to protect the health of the people of Florida. The supreme court held that the act was within the police power of the state, to protect the reputation of one of its great industries, saying:

> ". . . The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier v. Connolly*, 113 U. S. 27. It is not subject to definite limitations, but is coextensive with the necessities of the case and the safeguards of public interest. *Camfield v. United States*, 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or

> welfare, as well as those specifically intended to promote the public safety or the public health. *Chicago & C. Railway v. Drainage Commissioners*, 200 U. S. 561, 592.
>
> ". . .
>
> ". . . The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

We are told by *amicus curiae* and by the respondents in this case that the 1931 law was amended as a result of a study of the difficulties with which the apple industry has been faced in recent years in marketing its products in the east. While this fact does not appear in the pleadings before the court, it is not alleged in the complaint that the act was passed for no legitimate purpose, and, as we have said, the presumption is that a state of facts existed on which the legislation could properly be based. The mere fact that the act was not necessary to promote the public health, therefore, is not sufficient to render it invalid.

The plaintiffs argue that the act denies them the right to market their "C grade" apples, but we do not so understand it. It merely changes a system of grading which had previously been established by the legislature. As a result of this change, some apples which were previously graded for marketing in boxes must now be packed in baskets, and on the other hand, some apples which previously were "C

grade" may now be marked "fancy." The wisdom of this change is a matter within the province of the legislature, not of this court, and its purpose, which we assume to be for the protection of the reputation of Washington apples and the betterment of the industry, and as a result the general welfare, is one which could properly be served in the exercise of the police power. Regulations of this type have been held valid in numerous cases, among them *Sligh v. Kirkwood, supra, Detweiler v. Welch*, 46 F. (2d) 75, 73 A. L. R. 1440, *Nebbia v. New York*, 291 U. S. 502 78 L. Ed. 940, 54 S. Ct. 505, 89 A. L. R. 1469, *Marshall v. Department of Agriculture*, 44 Idaho 440, 258 Pac. 171, *In re Fujii*, 189 Cal. 55, 207 Pac. 537, and *Avon Western Corp. v. Woolley*, 42 N. S. S. (2d) 690, 266 App. Div. 529. In cases holding acts of this type invalid, there has generally been a finding that the particular law was unreasonable or the court has adopted a narrow concept of the police power.

In *Inman v. Sandvig*, 170 Wash. 112, 15 P. (2d) 696, relied upon by the plaintiffs, this court held that a rule adopted by the Director of Agriculture providing that third grade apples should not be wrapped nor packed nor lidded in a standard apple box, was unreasonably discriminatory and violated the due process clause and the constitutional prohibition against the granting of special privileges and immunities. The decision resulted from a finding that the ruling was not based upon considerations of public health. In so far as the opinion reveals, it was not argued that the provision was designed to further the

economic well being of the industry. The case was before the court after a trial on the merits, and the only argument advanced in justification of the ruling was that it would prevent deception—a contention which the court found had no basis in fact. The principles governing the judicial approach to laws passed in the exercise of the police power, were not discussed; and the question presented in this case was not decided. The decision of that case, therefore, does not determine the decision in this.

It is admitted that the effect of the amendment is to impose upon the plaintiffs and other growers of what were formerly C grade apples, packing requirements which will adversely affect the market value of their produce. However, this in itself does not constitute a deprivation of property without due process of law. This court has stated the applicable principle in the leading case of *State ex rel. Davis-Smith Co. v. Clauson*, 65 Wash. 156, 117 Pac. 1101 (upholding the constitutionality of the workmen's compensation act of 1911) in these words, p. 195:

> "If . . . the act in controversy has a reasonable relation to the protection of the public health, morals, safety or welfare, it is not to be set aside because it may incidentally deprive some person of his property without fault or take the property of one person to pay the obligations of another. To be fatally defective in these respects, the regulations must be so utterly unreasonable and so extravagant in nature and purpose as to capriciously interfere with and destroy private rights."

The plaintiffs do not question the power of the

legislature to establish grades of edible apples and to base the gradations primarily on color. They do not challenge the constitutionality of the 1939 act establishing such grades. They question only the right of the legislature to change such grades, once they have been established, if such a change operates to reduce the market value of their produce. If the legislature can regulate the marketing of these products at all (and, as we have said, it can do so where it finds that it is in the public interest to protect the reputation and welfare of the industry), it can refine those regulations or change them to further the legitimate purposes of the law. If such changes incidentally affect adversely the market value of some of the produce in question, that is no more an objection now than it was when the regulatory law was initially enacted if in the judgment of the legislature, the best interests of the industry as a whole will be served. Nowhere in the complaint do we find an allegation that the 1959 amendment was not enacted for any legitimate purpose within the confines of the police power or that it was not reasonably calculated to effect that purpose.

But it is urged that the law is arbitrary and discriminatory because it has eliminated the C grade in the case of red and partial red varieties, but has not done so in the case of the yellow and green varieties.

Article I, § 12 of the state constitution and the fourteenth amendment to the Federal constitution, prohibiting special privileges and immunities and guaranteeing equal protection of the law, require

that class legislation must apply alike to all persons within a class, and reasonable ground must exist for making a distinction between those within, and those without, a designated class. Within the limits of these restrictive rules, the legislature has a wide measure of discretion, and its determination, when expressed in statutory enactment, cannot be successfully attacked unless it is manifestly arbitrary, unreasonable, inequitable, and unjust. *Faxe v. Grandview*, 48 Wn. (2d) 342, 294 P. (2d) 402; *Bauer v. State*, 7 Wn. (2d) 476, 110 P. (2d) 154; *State ex rel. Bacich v. Huse*, 187 Wash. 75, 59 P. (2d) 1101; *Northern Cedar Co. v. French*, 131 Wash. 394, 230 Pac. 837. It is universally held that courts will not look too nicely into legislative acts to determine whether a reasonable distinction exists. *Faxe v. Grandview, supra; Bauer, v. State, supra; Northern Cedar Co. v. French, supra; Garretson Co. v. Robinson*, 178 Wash. 601, 35 P. (2d) 504.

The legislature has chosen to make a distinction between these products on the basis of color. The plaintiffs do not deny the propriety of such distinctions in the grading of apples. Unquestionably, the law applies alike to all members of the same class. The growers of red and partial red varieties are in one class and the growers of yellow and green varieties are in the other. The latter varieties comprise only five per cent of the total apples grown and marketed in this state. It may well be that the legislature found that the marketing of apples designated as C grade in standard Washington apple boxes had

no adverse effect on the market value and reputation of the fancy grades of yellow and green varieties and, therefore, no change in the grading system for these apples was needed. The legislature may have found it to be a fact that color differences in the yellow and green varieties of apples are much less pronounced than in the red and partial red varieties, and have little significance in the mind of the purchaser.

In any event, there can be no doubt that a distinction exists, and the complaint does not show that it is an arbitrary or unreasonable distinction. The allegation, therefore, do not show that the act denies the plaintiffs the equal protection of the laws nor grants to others special privileges and immunities.

The plaintiffs say that the amendment constitutes an unlawful delegation of legislative authority. The question of delegation of legislative authority was examined at length by this court in the case of *Senior Citizens League, Inc. v. Department of Social Security*, 38 Wn. (2d) 142, 228 P. (2d) 478. At page 152, this court said:

> "The constitutional prohibition against the delegation of legislative power does not preclude the delegation to administrative officers or boards of the power to determine some fact or state of things upon which the application of the law is made to depend, provided the law enunciates a standard by which such officers or boards must be guided. *State ex rel. Chicago, M. & St. P. R. Co. v. Public Service Commission*, 94 Wash. 274, 162 Pac. 523; *State v. Bayles*, 121 Wash. 215, 209 Pac. 20; *Roger v. Public Utility Dist. No. 1*, 186 Wash. 142, 56 P. (2d)

1302; *State ex rel. Washington Toll Bridge Authority v. Yelle*, 195 Wash. 636, 82 P. (2d) 120; *Morgan v. Department of Social Security*, 14 Wn. (2d) 156, 127 P. (2d) 686.

"The legislature may also, under proper circumstances, delegate to administrative officers and boards, authority to promulgate rules and regulations to carry out an express legislative purpose, or to effect the operation and enforcement of a law. *Vail v. Seaborg*, 120 Wash. 126, 207 Pac. 15; *State v. Nelson*, 146 Wash. 17, 261 Pac. 796; *In re Gifford*, 192 Wash. 562, 74 P. (2d) 475, 114 A. L. R. 348; *Home Owners' Loan Corp. v. Rawson*, 196 Wash. 548, 83 P. (2d) 765; *State v. Miles*, 5 Wn. (2d) 322, 105 P. (2d) 51."

Provision is made in RCW 15.16.010 for hearings to determine the facts on the basis of which the characteristics of the grades provided for in the amendment shall be determined. The legislature has provided a minimum color standard to guide the director of agriculture. The determination of the exact characteristics which should be assigned to each grade could be made intelligently only after an investigation of pertinent facts and is a matter which the legislature properly left to the administrative agency which was best equipped to make that determination. The complaint shows no unlawful delegation of legislative power.

It is contended that the act imposes an undue burden upon interstate commerce; but it is well settled that, while Congress has the exclusive power to regulate interstate commerce, in the absence of congressional action in conflict therewith, a state

in the exercise of the police power may adopt legislation designed to promote the public welfare; and, to that end, may make regulations relative to the disposal of the products of the state even though such regulations may incidentally or indirectly affect interstate shipments. *Minnesota Rate Cases*, 230 U. S. 352, 57 L. Ed. 1511, 33 S. Ct. 729; *Sligh v. Kirkwood, supra; Detweiler v. Welch, supra.*

The complaint having failed to state facts sufficient to show that Laws of 1959, chapter 230, contravene some provision of the state or federal constitution, the demurrer should have been sustained and the action dismissed.

It is so ordered.

WEAVER, C. J. MALLERY, DONWORTH, FINLEY, OTT, and HUNTER, JJ., concur.

FINLEY, J. (concurring)—I have signed the majority opinion, concurring in the views expressed and the result reached therein with the following observation:

I agree with the holding of this court in *Inman v. Sandvig* (1932), 170 Wash. 112, 15 P. (2d) 696, if, as I believe is proper, that decision is limited to a holding that, *solely as a labeling device*, the relegation of certain grades of apples to inconvenient and uneconomical types of containers is constitutionally unjustifiable. However, to the extent that the *Inman* case has any broader implications, conflicting with the views expressed by the majority in the instant case, I believe the *Inman* case should be overruled.

FOSTER, J. (concurring in the result)—While I

concur in the court's disposition of this appeal, in my view *Inman v. Sandvig*, 170 Wash. 112, 15 P. (2d) 696, was wrongly decided, cannot be distinguished and should be expressly overruled.

HILL, J. (dissenting)—In my opinion, the question in this case was decided in *Inman v. Sandvig*, 170 Wash. 112, 15 P. (2d) 696, contrary to the contention of the appellant. In that case, the illegality of the rules adopted by the Director of Agriculture was challenged. Prior to August 1, 1932, extra fancy or first grade, fancy or second grade, and C grade or third grade apples, could be lawfully sold and marketed in the standard apple box of the state of Washington. Pursuant to the rules and regulations of the Director of Agriculture, on August 1, 1932, the director adopted rules which prohibited the wrapping, packing, and lidding of C grade apples in the standard apple box of the state of Washington.

The evidence was that the standard apple box of determined dimensions was established in 1903, by statutory law; that it had been the custom for many years to pack and market apples grown in this state in a standard apple box; and that the extra fancy, fancy, and C grade apples were marketed by the use of this container. The evidence also disclosed that C grade apples, as defined by the rules prior to 1932, were not detrimental to public health in their consumption as food, and were as free from fault as were the C grade apples defined by the rules adopted August 1, 1932; that a very large quantity of apples produced in this state each year were of the C grade,

as defined by the old rule; and that there was no necessity for the rule based upon consideration of health.

This court stated, page 118:

"We are of the opinion that the rule adopted and promulgated by the director of agriculture on August 1, 1932, with reference to third grade apples, in so far as that rule provides that third grade apples 'shall not be wrapped nor packed nor lidded in a standard apple box of the state of Washington,' is unreasonably discriminatory as against third grade apples in favor of first and second grade apples, and in violation of Art. I, § 3, of our state constitution, providing that 'no person shall be deprived of life, liberty, or property without due process of law,' and Art. I, § 12, of our state constitution, providing that

" 'No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.'

"The word 'law,' as used in this section, manifestly includes a rule made by any administrative authority, as well as a law made by direct legislative authority. Our conclusion seems to us so plainly correct as to render it unnecessary to call for any extended review or citation of the many court decisions and texts supporting it. The controlling principles are well stated in general terms in the text of 6 R. C. L. 196 as follows:

" 'The constitutional guaranty that no person shall be deprived of his property without due process of law may be violated without the physical taking of property for public or private use. Its capability for enjoyment and adaptability to

some use are essential characteristics and attributes without which property cannot be conceived. Hence a law is considered as being a deprivation of property within the meaning of this constitutional guaranty if it deprives an owner of one of its essential attributes, or destroys its value, or restricts or interrupts its common, necessary or profitable use, or hampers the owner in the application of it to the purposes of trade, or imposes conditions upon the right to hold or use it, and thereby seriously impairs its value. These general principles apply not only to statutes enacted by the legislature but to the action of executive officers generally'."

I am unable to distinguish *Inman v. Sandvig*, *supra*, from the instant case and feel that the court is bound by its holding.

HILL, J.

APPENDIX "B"

TRANSCRIPT OF PROCEEDINGS IN STATE COURT

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs*, vs. JOE DWYER, Director of Agriculture of the State of Washington. *Defendant.*	No. 43477 AMENDED COMPLAINT

COME NOW the Plaintiffs and leave of Court having been had and obtained file herein their Amended Complaint and for a first cause of action allege:

I.

That at all times herein mentioned Cecil C. Clark and Catherine Clark were and now are husband and wife, residing in Yakima County, Washington, and that they bring this action in their own right for themselves and on behalf of all other parties similarly situated and having like right and interest.

II.

That at all times herein mentioned Joe Dwyer was and now is the duly appointed, qualified and acting Director of the Department of Agriculture of the State of Washington.

III.

That Plaintiffs have been for many years and now are engaged in the growing of red and partial red varieties of apples in the State of Washington, which

apples in substantial quantities have been and now are packed, shipped and sold in interstate commerce.

IV.

That the State of Washington produces and ships more apples than any other State in the United States. That according to figures released by the State of Washington, Department of Agriculture, there were produced in the State of Washington in the year 1957 approximately 33,000,000 bushels of apples of a value of about $73,000,000, and there were produced in the year 1958 approximately 30,000,000 bushels of apples of a value of about $75,000,000, and that similar production is expected in the year 1959. That the production of apples in the State of Washington during the years 1957, 1958 and 1959 as herein alleged consisted of approximately 95% of the red and partial red varieties and approximately 5% of the green and yellow varieties. That the production of the green and yellow varieties is increasing.

V.

That all varieties of apples were, prior to the enactment of Chapter 230, Session Laws 1959, State of Washington, marketed and shipped as "Washington Extra Fancy", "Washington Fancy", and "Washington C Grade". That the grade of said apples is determined at time of packing. That a substantial quantity of apples shipped heretofore have been Washington C Grade red and partial red varieties of apples. That for the 1957-1958 crop year there were approximately 4,250,000 boxes of C Grade ap-

ples of red and partial red varieties available for shipment, and shipped in interstate commerce. That for the crop year 1958-1959 there were approximately 2,500,000 boxes of C Grade apples of red and partial red varieties available for shipment. That as of May 23, 1959, all of said 1958-1959 C Grade apples were shipped in interstate commerce except approximately 264,708 boxes which remain on hand for shipment and will be shipped in due course of business in interstate commerce. The price of said C Grade red and partial red varieties of apples in 1957-1958 and 1958-1959 was generally $2.00, or more, per box.

VI.

The weather conditions are largely responsible for the production of apples of C Grade of red and partial red varieties and they are not primarily a result of inferior farming and growing practices. That the basic difference of the C Grade apple in the red and partial red varieties is less color than is found in the "Extra Fancy" and "Fancy" grades. Apples mature earlier in the season generally at lower elevations and in the more southerly parts of the State and have less opportunity to color and in these areas substantially larger quantities of C Grade apples of red and partial red varieties are produced than in areas of higher elevation and later maturity.

VII.

That a substantial quantity of red and partial red varieties of apples raised by Plaintiffs are classified as Washington C Grade, under the law prior to the enactment of Chapter 230, Session Laws 1959, State

of Washington, the specifications for which as heretofore established by the Director of Agriculture are among other things:

> "Apples of one variety which are mature, hand-picked, clean, not badly misshapen, sound and free from serious damage caused by hail or punctures."

That C Grade apples, including red and partial red varieties are wholesome and healthful, that they store and ship as well as Extra Fancy or Fancy Grades, and that they are good to eat, cook and use for human consumption. That the shipping and marketing of C Grade apples of red and partial red varieties in the manner heretofore allowed is in no way detrimental to the public safety, health, morals, or convenience, nor does it constitute a fraud upon the public.

VIII.

That pursuant to R.C.W. 15.16.010, the Director of Agriculture of the State of Washington has heretofore promulgated certain standards for apples which are presently in effect and which include the standards for C Grade apples of the red and partial red varieties. That a copy of said standards for apples is attached hereto, marked Exhibit "A" and incorporated herein by reference as though fully set forth.

IX.

That the Legislature of the State of Washington enacted Chapter 230 of the Laws of 1959 entitled:

> "AN ACT Relating to standards of grades and packs of agricultural commodities; amending

section 1, chapter 222, Laws of 1939 and RCW 15.16.080; and adding a new section to chapter 15.16 RCW."

That said Chapter 230, Laws of 1959, was approved by the Governor of the State of Washington on March 23, 1959; that said act of the Legislature, among other things, provided that:

"Section 1. Section 1, chapter 222, Laws of 1939, and RCW 15.16.080 are each amended to read as follows:

The director shall adopt and promulgate rules and regulations establishing the following grades of apples: *For green and yellow varieties:* (1) extra fancy, (2) fancy, (3) C grade, (4) culls, and (5) infected culls. *For red and partial red varieties*: (1) *extra fancy,* (2) *fancy,* (3) *culls, and* (4) *infected culls.*

No person shall pack, sell, or ship apples unless the same comply with the rules, regulations and grades adopted pursuant to RCW 15.16.-010.

Section 2. There is added to chapter 15.16 RCW a *new section* to read as follows:

The director when establishing standards of color requirements for red varieties and partial red varieties of apples shall establish color standards for such varieties which are not less than the following:

1. *Arkansas Black*	*Fifteen percent*
2. *Spitzenburg (Esopus)*	*Fifteen percent*
3. *Winesap*	*Twenty percent*
4. *King David*	*Fifteen percent*
5. *Delicious*	*Twenty percent*
6. *Staymen Winesap*	*Ten percent*
7. *Vanderpool*	*Ten percent*
8. *Black Twig*	*Ten percent*
9. *Jonathan*	*Ten percent*

10. *McIntosh*	*Ten percent*
11. *Rome*	*Ten percent*
12. *Red Sport Varieties*	*Twenty percent*

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties."

That color requirements set forth in Section 2 above alleged apply to Fancy Grade. That the result of said Chapter 230 in eliminating C Grade apples of red and partial red varieties and by decreasing the color requirement for Fancy Grade results in at least 66⅔% of the former C Grade apples being classified as culls. That such cull classification allows retail shipment and marketing only in marked bushel baskets in conformity with R.C.W. 15.16.160. That said elimination of C Grade by the classification thereof as culls decreased their market value in that they can only be sold to processors as culls or in accordance with R.C.W. 15.16.160, the market price of which, in either case, averages 75% less than the market price for C Grade apples.

X.

That Chapter 230, Laws of 1959, as aforesaid, will go into effect on August 1, 1959.

XI.

That Defendant, as Director of Agriculture of the State of Washington, is charged with the enforcement of Chapter 15 R.C.W. and specifically with enforcement of R.C.W. 15.16.080 as amended and Defendant will promulgate rules and regulations eliminating C Grade apples of the red and partially red varieties, as heretofore alleged, and will require

and compel plaintiffs to comply with the aforesaid statute and with the rules and regulations promulgated thereunder and will prosecute the Plaintiffs criminally and enforce against them the penalties provided therefor, if Plaintiffs violate the said law, rules or regulations.

XII.

That Defendant will immediately enforce Chapter 230, Laws of 1959, on and after its effective date August 1, 1959, and such enforcement will directly and irreparably damage the Plaintiffs by depriving them of valuable property and property rights contrary to the provisions of the U. S. Constitution and of the Constitution of the State of Washington, as hereinafter alleged.

XIII.

That Plaintiffs allege that Chapter 230, Laws of 1959, is unconstitutional and void for the reasons set forth as follows:

1. That said law violates Article I, Section 3, of the Washington State Constitution, which provides:

> "No person shall be deprived of life, liberty, or property, without due process of law."

2. That said law violates Article I, Section 12, of the Washington State Constitution, which provides:

> "No law shall be passed granting to any citizen, class of citizens or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

3. That said law violates Amendment XIV of the

Constitution of the United States, which provides in part:

> "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. That said law violates Article I, Section 8, of the United States Constitution, which provides, among other things:

> "The Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes;"

5. That said law is an improper, unwarranted and prejudicial extension of the police powers reserved to the State of Washington.

6. That said law is an unlawful, unwarranted and arbitrary restriction upon the marketing, shipping and entry into commerce of apples of red or partial red varieties raised in the State of Washington, which restriction is not equally applicable to apples of all varieties raised for marketing, shipment and entry into commerce in other states.

7. That said law is an unlawful delegation of legislative authority.

8. That said law is an unlawful, unwarranted and arbitrary classification in that it applies to apples of red and partial red varieties but not to yellow and green varieties, and in so doing, is a denial of equal protection to the grower of red and partial red varieties.

FURTHER, and for second cause of action, Plaintiffs allege:

I.

Plaintiffs reallege all of Paragraphs I through XIII, inclusive, of their first cause of action, and by reference thereto incorporate the same herein as though fully set forth.

II.

That Joe Dwyer, as Director of Agriculture of the State of Washington, unless restrained and enjoined by the Court, will on and after August 1, 1959, promulgate rules and regulations pursuant to Chapter 230, Laws of 1959, thereby eliminating C Grade apples of the red and partial red varieties, and will immediately enforce said rules and regulations; that Plaintiffs are without any speedy and adequate remedy at law and unless Defendant is enjoined from enforcing Chapter 230, Laws of 1959, on and after August 1, 1959, Plaintiffs and all others similarly situated will suffer irreparable loss and damage.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. On Plaintiffs' first cause of action that Chapter 230, Laws of 1959, be declared unconstitutional and void, and that the rights of Plaintiffs thereunder be defined and declared.

2. On Plaintiffs' second cause of action that, if the hearing herein is still pending as of August 1, 1959, that an order to show cause issue out of the above-entitled Court, requiring said Defendant to show cause why they should not be enjoined and re-

strained pendente lite and permanently from enforcing and carrying out the provisions of Chapter 230, Laws of 1959, and that said law be declared unconstitutional and void.

3. For Plaintiffs' Costs and disbursements herein expended and incurred.

4. For such other and further relief as the Court may deem just and equitable in the premises.

HALVERSON, APPLEGATE & MCDONALD
DONALD H. BRAZIER, JR.
Attorneys for Plaintiffs

STATE OF WASHINGTON }
} ss.
County of Yakima }

CECIL C. CLARK, being first duly sworn on oath deposes and says:

That he is one of the Plaintiffs above named; that he has read the within and foregoing AMENDED COMPLAINT, knows the contents thereof and believes the same to be true.

s/Cecil C. Clark

SUBSCRIBED AND SWORN to before me this 2nd day of June, 1959.

s/C. W. Halverson
Notary Public in and for the State of Washington, residing at Yakima.

Service accepted and copy
received of the within and
foregoing AMENDED COMPLAINT
this day of June, 1959.

JOHN J. O'CONNELL
Attorney General
By
Assistant Attorney General
Attorneys for Defendant.

STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE

WASHINGTON STANDARDS FOR APPLES

Victor B. Langlie
Governor

Joseph S. Arsdale
Director

FOREWORD

This booklet contains the official Washington Standards for Apples as promulgated by the Department of Agriculture at the request of the apple growers and shippers of the state.

These grades and standards were adopted on the basis of hearings held in the producing districts and of petitions submitted to the Director as supplemental testimony. As is the case in writing standards for agricultural products, the limitations as set forth for each grade are the minimums allowed in that grade. For the benefit of the layman who may be interested in our grade structure, it should be explained that the defects, or minimums, stated are not requirements in meeting a grade, the majority of packages in our grades are normally well above these minimum requirements.

In addition to Washington grades—Washington Extra Fancy, Wash. Fancy, Wash. C Grade and their combinations—the state has also adopted the U. S. Extra Fancy, U. S. Fancy and U. S. No. 1 grades for apples and, at the option of the grower, shipper or packer, these U. S. grades may be used. Private grades may be used if proper filling as set forth in these standards has been complied with by the person, firm or organization who wishes to avail themselves of this privilege.

It is the desire of our Department that the use of these grades and standards will benefit the entire apple industry of the state by placing Washington products on the market in such a manner as to facilitate and expedite marketing procedures and to reflect credit on the quality of our products.

Sverre N. Omdahl
Director of Agriculture

Date: July 3, 1956.

WASHINGTON STANDARDS FOR APPLES

(Effective for all apples marketed within the State)

RED, PARTIAL RED OR BLUSHED VARIETIES

U. S. Extra Fancy (See page 14).

Washington Extra Fancy or **First Grade** shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible watercore, broken skin, and from damage, caused by bruises (a) limb rubs (b), spray burn (c) sunburn (d), russeting (e, f, g), (h), drouth spot (i), hail marks (i), apple scab (j), disease and insect injury (k, m).

Each apple shall have the amount of color hereinafter specified for apples in this grade.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Fairly well formed" means the apple shall have the normal shape characteristic of the variety except that one-half of the apple may deviate slightly or the apple may be slightly flattened as by frost injury.

"Sound" means apples that at time of packing are free from visible defects, such as decay, breakdown, scald, bitter pit, or physical injury affecting quality.

"Aggregate area" means that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.

"Damage": The following shall not be considered as damage:

(a) Slight handling bruises and box bruises, such as are incident to good commercial handling in the preparation of a tight pack.

(b) Limb rubs not to exceed ⅜ inch in aggregate area.

(c) Spray burn, which has altered or discolored natural pigment when the normal color of the apples is not seriously affected, when there is no blistering or cracking of the skin, except that red spot, such as caused by Bordeaux, shall not extend over more than 20% of the apple. Spray burn of a russet nature shall be governed by the definition covering solid russeting.

(d) Sunburn, when the normal color of the apple is not seriously affected, there is no blistering or cracking of the skin, and the discolored area blends into the normal color of the fruit.

(e) Slight rough russeting which does not cover an area of more than ½ inch in diameter if it is not continuous with the russeting in the stem basin or calyx cavity.

(f) Smooth russeting shall be permitted at the stem or calyx end provided such russeting is not visible for more than ½ inch when the apple is placed with the russet end down on a flat surface, except in the Newtown variety characteristic russet commencing at the stem or calyx end and not extending beyond the center of the apple shall be permitted as long as it is continuous from the stem or calyx bowl.

(g) Smooth netlike russeting which does not extend over an aggregate area of more than 10% of the surface, except in Rome Beauty and Jonathan netlike russeting on the colored portion of the apple which does not materially detract from its appearance shall not be counted in computing the 10% area mentioned above.

(h) Solid russeting, such as is characteristic of frost, spray burn, hail, and certain insect and disease injury affecting a total aggregate area of not to exceed ⅜ inch.

(i) Hail marks, drouth spots, or other depressions when the injury is slight, the skin is not broken and the depressions do not exceed an aggregate area of ¼ inch in diameter with no single depression exceeding ⅛ inch in diameter or detract seriously from the appearance of the fruit. Hail injury of a russet character shall be governed by the definition covering russet injury.

(j) Apple scab spots affecting a total area of not more than ¼ inch in diameter.

(k) Any healed sting or stings which affect a total area of more than ⅛ inch in diameter including any encircling discolored rings.

(m) Slight aphis signs or thrip marks which do not roughen or pebble the surface of the apple.

An apple may show any one or a combination of the following defects if the aggregate area does not exceed the specified tolerance for the defects and the aggregate of the combination dos not exceed ⅜ inch; the defects are: Apple scab, solid russeting, and limb rubs.

U. S. Fancy (See page 14).

Washington Fancy or **Second Grade** shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, and free from broken skin and from damage caused by bruises (a), and from serious damage caused by sunburn (a), spray burn (a), limb rubs, (b), russeting (c), growth cracks (d), visible watercore (e), hail marks or drouth spots (f), disease (g) and insect injury (h), (i);

Each apple shall have the amount of color hereinafter specified for apples in this grade.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Not badly misshapen" means that an apple may be more irregularly shaped than "Fairly well formed", as defined above, but shall not be deformed to the extent of materially affecting its culinary value or its general appearance.

"Sound" means apples that at time of packing are free from visible defects, such as decay, breakdown, scald, bitter pit, or physical injury affecting quality.

"Aggregate area" means that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.

"Damage": The following shall not be considered as damage:

(a) Slight handling bruises and box bruises, such as are incident to good commercial handling in the preparation of a tight pack.

"Serious damage" means any injury or defect or any combination of injuries and/or defects which seriously detract from the appearance or keeping quality of the apple. The following defects shall not be considered as serious damage:

(a) Sunburn or spray burn which does not seriously detract from the appearance of the fruit.

(b) Limb rubs which affect not more than 1/10 of the surface in the aggregate.

(c) Smooth solid russeting which affects not more than ½ of the surface in the aggregate, including any russeting in the stem basin or rough or bark-like russeting which does not detract from the appearance of the fruit to a greater extent than the smooth solid russeting permitted.

(d) Growth cracks, such as occur in Staymans, shall be permitted when no crack exceeds ½ inch in length.

(e) Visible watercore which does not affect an area of more than ½ inch in diameter.

(f) Hail marks, drouth spots or other depressions, when the injury is slight, the skin is not broken and the depressions do not exceed an aggregate area of 10% of the surface in red or partial red varieties or more than 20% of the surface in green or yellow varieties.
Note: Export standards limit these defects to 10% of the surface.

(g) Scab spots affecting an aggregate area of not to exceed ½ inch in diameter.

(h) Any healed sting or healed stings which affect a total area of more than 3/16 inch in diameter including any encircling discolored rings.

(i) Aphis pebbling or thrip marks not seriously detracting from the appearance of the apple.

U. S. No. 1 (See page 14).

Washington C Grade or **Hail Grade** shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, and free from serious damage caused by hail or punctures.

Caution: Punctured apples do not meet the requirements of the Export Apple and Pear Act and cannot be certified on an export form certificate.

Each apple shall have the amount of color hereinafter specified for apples in this grade.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Not badly misshapen" means that an apple may be made irregularly shaped than "Fairly well formed" as defined above, but shall not be deformed to the extent of materially affecting its culinary value or its general appearance.

"Sound" means apples that at time of packing are free from visible defects, such as decay, breakdown, scald, bitter pit, or physical injury affecting quality.

"Serious damage" in Red or Partial Red Varieties, C Grade or Hail Grade: The following shall not be considered as serious damage: Apples which meet the requirements for Fancy Grade (in the Red or Partial Red Varieties) but have punctures not exceeding ¼ inch in diameter or healed hail marks.

Color Requirements

Apples shall be admitted to the grade subject to the following color specifications:

Red Varieties: For the red varieties the percentage of color refers to the aggregate color areas of the surface which must be covered by a good shade or shades of red characteristic of the variety.

	Extra Fancy	Fancy	C Grade
Arkansas Black	50%	20%	15%
Spitzenburg (Esopus)	50%	20%	15%
Winesap	50%	25%	15%
King David	50%	20%	15%
Red Sport Varieties*	65%	25%	15%

* When sport varieties are marked as such, they shall meet the color requirements of red sport varieties, and the boxes must also bear the name of the parent variety.

Partial Red Varieties: For the striped red varieties the percentage of color refers to the area of the surface in which the stripes of a good shade of red shall predominate over stripes of lighter red, green or yellow.

	Extra Fancy	Fancy	C Grade
Delicious	50%	25%	15%
Stayman Winesap	35%	15%	10%
Vanderpool	35%	15%	10%
Black Twig	35%	15%	10%
Jonathan	35%	15%	10%
McIntosh	35%	15%	10%
Rome	35%	15%	10%
Red Cheeked or Blushed Varieties			
Winter Banana	Some Color	0	0

GREEN OR YELLOW VARIETIES

U. S. Extra Fancy (See page 14).

Washington Extra Fancy or **First Grade** shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises (a), russeting (b, c, e), spray burn (d, e), sunburn (d, e), limb rubs (e), drouth spot (f), hail marks (f), visible water core, broken skin, apple scab, stings, and from diseases and insect injury (g), except that slight blemishes shall be permitted in this grade.

Each apple shall have the amount or color hereinafter specified for apples in this grade.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmnes of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Well Formed" means having the normal shape characteristic of the variety, except that the shape may be slightly irregular provided it does not detract from the general appearance of the apple.

"Sound" means apples that at time of packing are free from visible defects, such as decay, breakdown, scald, bitter pit, or physical injury affecting quality.

"Aggregate area" mans that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.

"Slight Blemishes" means defects in excess of the following:

(a) Slight handling bruises and box bruises such as are incident to good commercial handling in the preparation of a tight pack.

(b) Smooth russeting shall be permitted at the stem end provided such a russeting is not visible for more than ½ inch when the apple is placed stem end down on a flat surface, except in the Newtown variety characteristic russet commencing at the stem end shall be permitted as long as it is continu-

ous from the stem bowl and not extending beyond the center of the apple.

(c) Smooth net-like russeting which does not extend over an aggregate area of more than 5% of the surface of the apple.

(d) Sunburn or spray burn when slight and when the normal color of the apple is but slightly changed and the affected area does not exceed 5% of the surface of the apple.

(e) Smooth solid russeting, light limb rubs, hail marks or spray burn of a russet character shall be permitted when the aggregate area affected does not exceed ¼ inch.

(f) Slight hail marks or other depressions when there is no discoloration, when the indentations are very shallow, and no individual indentation exceeds ⅛ inch in diameter and the aggregate area affected does not exceed ¼ inch.

(g) Thrip marks not to exceed three in number, shall be permitted.

U. S. Fancy (See page 14).

Washington Fancy or **Second Grade** shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible watercore, broken skin, and from damage caused by bruises (a), limb rubs (b), spray burn (c), sunburn (d), russeting (e, f, g, h), drouth spot (i), hail marks (i), apple scab (j), disease and insect injury (k, m).

Each apple shall have the amount of color hereinafter specified for apples in this grade.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Fairly well formed" means the apple shall have the normal shape characteristic of the variety except that one-half of the apple may deviate slightly or the apple may be slightly flattened as by frost injury.

"Aggregate area" means that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.

"Damage": The following shall not be consideredas damage:

(a) Slight handling bruises and box bruises, such as are incident to good commercial handling in the preparation of a tight pack.

(b) Limb rubs not to exceed ½ inch in aggregate area.

(c) Spray burn, which has altered or discolored natural pigment when the normal color of the apples is not seriously affected, when there is no blistering or cracking of the skin, except that red spot, such as caused by Bordeaux, shall not extend over more than 20% of the apple. Spray burn of a russet

nature shall be governed by the definition covering solid russeting.

(d) Sunburn, when the normal color of the apple is not seriously affected, there is no blistering or cracking of the skin, and the discolored area blends into the normal color of the fruit.

(e) Slight rough russeting which does not cover an area of more than ½ inch in diameter if it is not continuous with the russeting in the stem basin or calyx cavity.

(f) Smooth russeting shall be permitted at the stem or calyx end provided such russeting is not visible for more than ½ inch when the apple is placed with the russet end down on a flat surface, except in the Newtown variety characteristic russet commencing at the stem or calyx end and not extending beyond the center of the apple shall be permitted as long as it is continuous from the stem or calyx bowl.

(g) Smooth netlike russeting which does not extend over an aggregate area of more than 20% of the surface.

(h) Solid russeting, such as is characteristic of frost, spray burn, hail, and certain insect and disease injury affecting a total aggregate area of not to exceed ½ inch.

(i) Hail marks, drouth spots, or other depressions when the injury is slight, the skin is not broken and the depressions do not exceed an aggregate area of ½ inch in diameter or detract seriously from the appearance of the fruit. Hail injury of a russet character shall be governed by the definition covering russet injury.

(j) Apple scab spots affecting a total area of not more than ¼ inch in diameter.

(k) Four stings, each having an encircling hard ring, usually green, or a slight depression, provided stings do not exceed ⅛ inch in diameter exclusive of any encircling ring.

(m) Slight aphis signs or thrip marks which do not roughen or pebble the surface of the apple.

An apple may show any one or a combination of the following defects if the aggregate area does not exceed the specified tolerance for the defects and the aggregate of the combination does not exceed ½ inch; the defects are: Apple scab, hail marks, drouth spots, solid russeting, and limb rubs.

U. S. No. 1 (See page 14).

Washington C Grade or **Third Grade** shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, and free from serious damage caused by sunburn (a), spray burn (a), limb rubs (b), russeting (c), growth cracks (d), visible watercore (e), hail marks (f), drouth spots (f), disease (g), and insect injury (h, i), and free from soft bruises and broken skin except that apples having Fancy or better color for the variety may contain punctures not exceeding ¼ inch in diameter.

Caution: Punctured apples do not meet the requirements of the Export Apple and Pear Act and cannot be certified on an export form certificate.

"Mature" means having reached the stage of maturity which will insure the proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

"Hand Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

"Clean" means free from excessive dirt, or other foreign material.

"Not badly misshapen" means that an apple may be more irregularly shaped that "Fairly well formed" as defined above, but shall not be deformed to the extent of materially affecting its culinary value or its general appearance.

"Sound" means apples that at time of packing are free from visible defects, such as decay, breakdown, scald, bitter pit, or physical injury affecting quality.

"Aggregate area" means that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.

"Serious damage" means any injury or defect or any combination of injuries and/or defects which seriously detract from the appearance or keeping quality of the apple. The following defects shall not be considered as serious damage:

(a) Sunburn or spray burn which does not seriously detract from the appearance of the fruit.
(b) Limb rubs which affect not more than 1/10 of the surface in the aggregate.
(c) Smooth solid russeting which affects not more than ½ of the surface in the aggregate, including any russeting in the stem basin or bark-like russeting which does not detract from the appearance of the fruit to a greater extent than the smooth solid russeting permitted.
(d) Growth cracks, such as occur in Staymans, shall be permitted when no crack exceeds ½ inch in length.
(e) Visible watercore which does not affect an area of more than ½ inch in diameter.
(f) Hail marks, drouth spots or other depressions, when the injury is slight, the skin is not broken and the depressions do not exceed an aggregate area of 10% of the surface in red or partial red varieties or more than 20% of the surface in green or yellow varieties.
Note: Export standards limit these defects to 10% of the surface.
(g) Scab spots affecting an aggregate area of not to exceed ½ inch in diameter.
(h) Five stings, each having an encircling hard ring, usually green, or a slight depression, provided stings do not exceed ⅛ inch in diameter exclusive of any encircling ring.
(i) Aphis pebbling or thrip marks not seriously detracting from the appearance of the apple.

Hail Grade of green or yellow varieties shall consist of apples which meet the requirements of Combination Extra Fancy and Fancy.

except that hail marks where the skin has not been broken and well healed hail marks where the skin has been broken shall be permitted provided the apples are fairly well formed. The marks or labels Extra Fancy" or "Fancy" shall not appear on the containers.

Color Requirements

Golden Delicious—Extra Fancy	75%	Characteristic color*
Fancy	75%	Characteristic color*
C Grade	33⅓%	Characteristic color*

*In the Golden Delicffious variety when the white or light green color predominates over the green color it shall be considered as the minimum characteristic color.

In the following not color required in Extra Fancy, Fancy, or C Grade; natural blush not objectionable:

Dutchess	Grimes (Golden)
Gravenstein	Ortley
King	White Winter Pearmain
Twenty Ounce	Newtown
Wolf River	Yellow Transparent

Combination Grades.

Combination Extra Fancy and Fancy: When Extra Fancy and Fancy apples are packed together, the boxes may be marked "Combination Extra Fancy and Fancy" and shall contain at least 80% Extra Fancy apples, except Newtowns, which shall contain at least 25% Extra Fancy apples.

Combination Extra Fancy, Fancy and C. Grade: When Extra Fancy, Fancy and C Grade apples are packed together, the boxes may be marked "Combination Extra Fancy, Fancy, and C. Grade" and shall contain at least 80% Extra Fancy apples, except Newtowns, which shall contain at least 25% Extra Fancy apples.

Combination Extra Fancy and C Grade: When Extra Fancy and C Grade apples are packed together, the boxes may be marked "Combination Extra Fancy and C. Grade" and shall contain at least 80% Extra Fancy apples, except Newtowns, which shall contain at least 25% Extra Fancy apples.

Combination Fancy and C Grade: When Fancy and C Grade apples are packed together, the boxes may be marked "Combination Fancy and C Grade" but shall contain at least 80% Fancy apples, except Newtowns, which shall contain at least 25% Fancy apples.

Jumble Pack: The larger sizes of the above grades may be removed and the rest packed and marked "Jumble" or "Face and Fill" in addition to the grade mark.

Culls: Apples which are not graded in conformity with the foregoing grades and which contain not more than 5% serious insect damage shall be designated as "CULLS."

Note: Chapter 222 of the Laws of 1939 require this grade shall be packed in one-bushel wooden baskents, ring faced and baskets lidded. It also provides for an inspection charge of $1.00, together with 5¢ per basket for advertising.

Infested Culls: Apples which are not graded in conformity with the foregoing grades and which contain 5% or more infestation from codling moth, San Jose scale or other horticultural pests, shall be designated as "Infested Culls."

Standard Box Packs.

A standard box in this state shall be eighteen inches long, eleven and one-half inches wide, and ten and one-half inches deep, inside measure. When boxes are marked with a size count, all apples shall be arranged according to the approved method and shall be fairly tightly packed at the time of packing, but shall not show excessive or unnecessary bruising caused by poor sizing, poor packing or an over-filled package. Each apple wrapped shall be well wrapped.

Note: Standard box packs of Golden Delicious shall be well filled or fairly well filled at the time of packing.

Tray Packs.

A standard tray pack container carries four, five, or six molded pulp trays and is packed to and marked with one of the same size counts of the same size apples as are packed in the standard box. All apples packed in tray pack containers shall be as uniformly sized as those packed in the standard box and shall be arranged according to the approved method for the tray type of pack. Each container shall be well filled or fairly well filled. To be fairly well filled a container must have not less than forty (40) pounds net of apples.

Tolerances Which Apply at Time of Packing.

In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent of the apples in any container may be below the requirements of the grade, provided that not more than 5 percent shall be seriously damaged by insects and not more than 1/10 of this amount, or 1 percent shall be allowed for decay and/or internal breakdown. Slight imperfections which are not discernable in good commercial sorting practice shall not be considered defects of grades.

In addition to the above, for standard box packs, in boxes or cartons marked with a size count, a tolerance of 10 percent for each of the defects of pack, such as wrapping, and tightness shall be permitted in any lot and shall be computed by counting, weighing or measuring the samples.

In addition to the above, a tolerance og 5 percent by count shall be allowed for apples below the specified minimum diameter and 10 percent for apples above any specified maximum diameter.

In addition to the above, a tolerance of 10 per cent for each of the defects of pack, such as wrapping, and tightness shall be permitted in any lot and shall be computed by counting, weighing or measuring the samples.

When applying the foregoing tolerances to the combination grades, no part of any tolerance shall be used to reduce the percentage of apples of the higher grade required in the combination.

The tolerances specified for the various grades are placed on a container basis. However, any lot of apples shall be considered as meeting the requirements of a specified grade if the entire lot averages within the tolerances specified, provided that no sample from the containers in any lot is found to exceed the following amounts:

For a specified tolerance of 10 per cent, not more than one and one-half times the tolerance shall be allowed in any one package.

For specified tolerances of 5 per cent, or less, not more than double the tolerance shall be allowed in any one package.

Tolerances Which Apply After Apples Have Been in Storage or in Transit.

After fruit has been placed in storage or in transit, scald, breakdown, decay, bitter pit, or physical injury affecting keeping quality which may have developed or may only have become evident after apples are packed are defined as applying to condition rather than to grade.

Marking Closed Containers.

The containers shall bear the correct name of the variety, or "Variety Unknown," the name of the grower, packer, or shipper, and his address, the grade and the number of apples or the net contents, either in terms of dry measure or weight. Any of these marks may be printed on the label but in case they are not, they must be stamped on the end of the container. On boxes, the grower's packer's or shipper's name and address, if not included on the label, shall be placed either in line with the grade marks above the label or on the opposite end of the box.

When containers are marked as to number, each container shall contain the correct number of apples designated by the markings.

Marking Open Containers.

Open containers shall be marked on the end with the name and address of the grower, packer or shipper, the grade, and variety.

Other Brands and Grades.

Any person, firm, or organization wishing to pack apples under any other grade or brand than according to the foregoing rules shall file a certified copy of the description of such grade or brand with the Director of Agriculture the year in which the apples so to be packed are grown. If such grade or brand is approved by the Director of Agriculture, apples may be packed under such grade or brand, instead of the official state grading rules and all boxes of apples so packed shall be marked with that grade or brand: *Provided*, That private grades or brands for apples may only be registered and approved when they meet the specifications required of Fancy Grade or better.

WASHINGTON STATE CONDITIONS STANDARDS

(Not Mandatory)

As applied to condition factors:

(1) Not more than an average of 5% of the apples in any lot, with not more than 10% in any one sample, shall be further advanced in maturity (firmness) than firm ripe.

(2) Not more than a total of 5% of the apples in any lot, with not more than 10% in any one sample, shall be damage by bitter pit, Jonathan spot, common scald, visible watercore, freezing or other such condition factors, excluding delayed sunburn.

(3) Not more than any average of 2% each in any lot, with not to exceed 8% in any sample, shall be allowed for apples affected by decay, visible breakdown, or by soft scald; except that after March 1 not more than an average of 3% each in any lot with not to exceed 10% in any sample shall be allowed for apples affected by decay, visible breakdown or by soft scald.

Remarks: On request, official certificates will bear the statement "Lot Meets Washington State Condition Standards," provided the apples meet the standard requirements at the time of inspection.

The following U. S. grades ONLY may be used for apples: U. S. Extra Fancy, U. S. Fancy and U. S. No. 1 as promulgated in the U. S. Standards for Apples and adopted effective July 23, 1951.

U. S. Extra Fancy consists of apples of one variety which are mature (1) but not overripe (2), carefully hand-picked (3), clean (4), well formed (5), free from decay, internal browning, internal breakdown, scald, scab, bitter pit, Jonathan spot, freezing injury, broken skins and bruises (except those that are slight and incident to proper handling and packing), and visible water core. The apples shall also be free from injury (6) caused by russeting (6a), sunburn or spray burn (6b), limb rubs (6c), hail (6d), drought spots (6d), scars (6d), stem or calyx cracks (6e), other diseases (6f), insects (6g), or mechanical or other means (6). Each apple of this grade shall have the amount of color specified hereinafter for the variety. (See Color Requirements, Tolerances and Condition after Storage or Transit.)

U. S. Fancy consists of apples of one variety which are mature (1) but not overripe (2), carefully hand-picked (3), clean (4), fairly well formed (7), free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, broken skins and bruises (except those incident to proper handling and packing), and visible water core. The apples shall also be free from damage (8) caused by russeting (8a), sunburn or spray burn (8b), limb rubs (8c), hail (8d), drought spots (8d), scars (8d), stem or calyx cracks (8e), other diseases (8f), insects (8g), or mechanical or other means. Each apple of this grade shall have the amount of color specified hereinafter for the variety. (See Color Requirements, Tolerances and Condition after Storage or Transit.)

U. S. No. 1. The requirements for this grade are the same as U. S. Fancy except for color and russeting. In this grade less color is required for all varieties except yellow and green varieties for which

he requirements for both grades are the same. Apples of this grade hall be free from excessive damage caused by russeting which means hat they shall meet the russeting requirements for U. S. Fancy as lefined under the definitions of "damage by russeting" (8a); *Pro-ided*, That, the aggregate area of an apple which may be covered y smooth net-like russeting shall not exceed 25 per cent: *And fur-her provided*, That, the aggregate area of an apple which may be overed by smooth solid russeting shall not exceed 10 per cent. (See Color Requirements, Tolerances and Condition after Storage or Transit.)

Color Requirements. In addition to the requirements specified or the above grades, apples of these grades shall have the percentage f color specified for the variety in Table I. For the solid red varieties he percentage stated refers to the area of the surface which must be overed with a good shade of solid red characteristic of the variety; *Provided*, That, an apple having color of a lighter shade of solid red r striped red than that considered as a good shade of red character-stic of the variety may be admitted to a grade, provided it has suf-cient additional area covered so that the apple has as good an ap-earance as one with the minimum percentage of good red character-stic of the variety required for the grade. For the striped red varie-es the percentage stated refers to the area of the surface in which he stripes of a good shade of red characteristic of the variety shall redominate over stripes of lighter red, green, or yellow. However, n apple having color of a lighter shade than that considered as a ood shade of red characteristic of the variety may be admitted to a rade: *Provided*, That, it has sufficient additional area covered so hat the apple has as good an appearance as one with the minimum ercentage of stripes of a good red characteristic of the variety re-uired for the grade. Faded brown stripes shall not be considered as olor except in the case of the Gray Baldwin variety.

Table I—Color Requirements for Specified U. S. Grades of Apples by Varieties

Variety	U. S. Extra Fancy percent	U. S. Fancy percent	U. S. No. 1 percent
Solid Red:			
Black Ben	75	50	25
Gano	75	50	25
Winesap	75	50	25
Other similar varieties①	75	50	25
Red Sport varieties①	75	50	25
Striped or partially red:			
Cortland	66	33	25
Jonathan	66	33	25
McIntosh	66	33	25
Other similar varieties①	66	33	25
Baldwin	50	25	15
Ben Davis	50	25	15
Delicious	15	25	15
Mammoth Black Twig	50	25	15
Northern Spy	50	25	15
Rome Beauty	50	25	15
Stayman	50	25	15
Turley	50	25	15
Wagener	50	25	15
Wealthy	50	25	15
Willow Twig	50	25	15
York Imperial	50	25	15
Other similar varieties①	50	25	15
Hubbardston	50	15	10
Stark	50	15	10
Other similar varieties	50	15	10
Red June	50	15	5
Williams	50	15	5
Other similar varieties	50	15	5
Gravenstein	25	10	5
Other similar varieties①	25	10	5

Table 1—Continued

Variety	U. S. Extra Fancy percent	U. S. Fancy percent	U. S. No. 1 percent
Red cheeked or blushed:			
Maiden Blush	(7)	(8)	(9)
Twenty Ounce	(7)	(8)	(9)
Winter Banana	(7)	(8)	(9)
Other similar varieties	(7)	(8)	(9)
Green varieties	(9)	(9)	(9)
Yellow varieties	(9)	(9)	(9)
Golden Delicious	(10)	(10)	(10)

(1) Arkansas Black, Beacon, Detroit Red, Esopus Spitzenburg, King David, Lowry, Minjon.

(2) When Red Sport varieties are specified as such they shall meet the color requirements specied for Red Sport varieties.

(3) Haralson, Kendall, Macoun; Melba, Snow (Fameuse).

(4) Bonum, Early McIntosh, Limbertwig, Milton, Nero, Paragon.

(5) Tinge of color.

(6) Duchess Red Astrachan, Smokehouse, Summer Rambo.

(7) Blush cheek.

(8) None.

(9) Characteristic ground color.

(10) 75 percent characteristic color. **Note:** "Characteristic color", when the white around the lenticels predominates over the green color, creating a mottling effect on the surface of the apple, it shall be considered as the minimum characteristic color.

TOLERANCES

In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent of the apples in any lot may fail to meet the requirements of the grade: *Provided*, That, not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged by insects and including not more than 1 percent for apples affected by decay or internal breakdown or both.

When applying the foregoing tolerances to Combination U. S. Extra Fancy and U. S. Fancy grade, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 25 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 15 percent of the higher grade.

When applying the foregoing tolerances to Combination U. S. Fancy and U. S. No. 1 grade, and to Combination U. S. No. 1 and U. S. Utility grade, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 40 percent of the higher grade.

APPLICATION OF TOLERANCES TO INDIVIDUAL PACKAGES

The contents of individual packages in the lot based on sample inspection, are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified for the grade:

For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided (as in the case of size, where a tolerance of 15 percent is provided) individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: *Provided*, That, not more than one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

BASIS OF CALCULATING PERCENTAGES

When the numerical count is marked on the container, percentages shall be calculated on the basis of count.

When the minimum diameter or minimum and maximum diameters are marked on the container, percentages shall be calculated on the basis of weight.

When the apples are in bulk, percentages shall be calculated on the basis of weight.

CONDITION AFTER STORAGE OR TRANSIT

Decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

SIZE REQUIREMENTS

The numerical count or the minimum diameter of the apples packed in a closed container shall be indicated on the container.

When the numerical count is marked on the container the minimum size of the largest apple shall be not more than one-fourth inch larger than the minimum size of the smallest apple.

When the numerical count is not shown the minimum diameter shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, whole and half inches, whole and quarter inches, or whole and eighth inches, as 2½ inches minimum, 2¼ inches minimum, or 2⅜ inches minimum, in accordance with the facts. It is suggested that both minimum and maximum diameters be marked on the container, as 2¼ to 2¾ inches, or 2½ to 2¾ inches, as

such marking is especially desirable for apples marketed in the export trade.

The measurement for minimum size shall be the largest diameter of the apple taken as right angles to a line from the stem end to the blossom end. The measurement for maximum size shall be the smallest dimension of the apple determined by passing the apple through a round opening.

In order to allow for variations incident to proper sizing, not more than 5 percent of the apples in any lot may not meet the size requirements: *Provided*, That, when the maximum and minimum sizes are both stated, an additional 10 percent tolerance shall be allowed for apples which are larger than the maximum size stated.

PACKING REQUIREMENTS

Each package shall be packed so that the apples on the shown face shall be reasonably representative in size, color and quality of the contents of the package.

Boxes. Apples packed in the standard northwestern apple boxes shall be arranged in the containers according to the approved and recognized methods with the stems pointing toward the ends of the boxes, except when jumbled. All packages shall be well filled but not to the extent as to cause excessive or unnecessary bruising to the apples because of overfilled packages. Apples packed in the standard northwestern apple boxes shall be tightly packed with sufficient bulge to prevent any appreciable movement of the apples within the containers when lidded. Each wrapped apple shall be completely enclosed by its individual wrapper.

Apples packed in other type boxes, such as nailed wooden boxes, wire-bound boxes, and fibreboard boxes, may be place packed, jumble packed faced, or jumble packed, and all packs shall be well filled.

Apples packed in boxes equipped with cell compartments or molded trays shall be of the proper size for the cells or the molds in which they are packed.

Apples packed in consumer unit cartons and packed into shipping containers shall completely fill the shipping container.

Baskets. Apples packed in U. S. standard bushel baskets, one-half bushel baskets and five-eighths bushel baskets may be ring faced and shall be tightly packed with sufficient bulge to prevent any appreciable movement of the apples within the containers when lidded.

Barrels. Apples packed in barrels shall be tightly packed.

In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may not meet these requirements.

Marking Requirements.

Containers of apples packed to the U. S. grades shall meet all of the container marking requirements as set forth on page 13.

STANDARDS FOR EXPORT

As applied to condition factors:

1. The apples in any lot shall be generally tightly packed when in barrels or baskets, and generally fairly tightly or tightly packed when in boxes.

2. Not more than 5 percent of the apples in any lot shall be further advanced in maturity than firm ripe.

3. Not more than 5 percent of the apples in any lot shall be damaged by storage scab.

4. Not more than a total of 5 percent of the apples in any lot shall be damaged by bitter pit, Jonathan spot, scald, internal breakdown, water core, freezing, decay, or other such condition factors: *Provided*, That,

(a) Not more than 2 percent shall be allowed for apples affected by decay;

(b) Not more than 2 percent shall be allowed for damage by internal breakdown;

(c) Not more than 2 percent of slight scald shall be permitted for applels properly packed in oiled paper or which have been especially treated with oil to prevent scald; otherwise, the apples must be free from scald.

Any lot of apples shall be considered as meeing the standards for export if the entire lot averages within the requirements specified: *Provided*, That, no sample from the containers in any lot is found to exceed double the percentages specified, except that for packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage defects if the entire lot averages within the tolerances specified.

DEFINITIONS

As used in these standards:

(1) "Mature" means that the apples have reached the stage of growth which will insure the proper completion of the ripening process. Before a mature apples becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing these different stages of firmness of apples:

(a) "Hard" means apples with a tenacious flesh and starchy flavor. Apples at this stage are suitable for storage and long-distance shipment.

(b) "Firm" means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety. Apples at this stage are also suitable for storage and long-distance shipment.

(c) "Firm ripe" means apples with crisp flesh except that the flesh of the apples of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy. Apples at this stage may be shipped long distances but should be moved into consumption within a short period of time.

(d) "Ripe" means apples with mealy flesh and soon to become soft for the variety. Apples at this stage should be moved immediately into consumption.

(2) "Overripe" means apples which are dead ripe, with flesh very mealy or soft, and past commercial utility.

(3) "Carefully hand-picked" means that the apples do not show evidence of rough handling or of having been on the ground.

(4) "Clean" means that the apples are free from excessive dirt, dust, spray residue and other foreign material.

(5) "Well formed" means that the apple has the normal shape characteristic of the variety, except that the shape may be slightly irregular, provided, it does not detract from the general appearance of the apple.

(6) "Injury" means any defect which more than slightly affects the appearance, or the edible or shipping quality of the apples.

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface, shall not be considered in determining whether or not on apple is injured by russeting, except that rough or bark-like russeting in the stem cavity or calyx basin shall be considered as injury when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin, shall be considered as injury:

(i) Smooth net-like russeting, when an aggregate are of more than 5 percent of the surface is covered, and the color of the russeting shows no very pronounced contrats with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted.

(ii) Smooth, solid russeting which covers an aggregate area of more than one-half inch in diameter, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is effected to a greater extent than the above amount permitted.③

(iii) Slightly rough russeting which covers an aggregate area of more than one-fourth inch in diameter.③

(iv) Rough russeting, unless it is well within the stem cavity or calyx basin and is not readily apparent.

Any one of the following defects, or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(b) Sunburn or spray burn, when the discolored area does not blend into the normal color of the fruit.

(c) Dark brown or black limb rubs which affect a total area of more than one-eighth inch in diameter, except that light

③ The area refers to that of a circle of the specified diameter.

brown limb rubs of a russet character shall be considered under the definition of injury by russeting (6a).①

(d) Hail marks, drought spots or other similar depressions or scars where there is appreciable discoloration other than russeting, or when the indentations are not superficial, or when an individual indentation exceeds one-eighth inch in diameter, or the total affected area exceeds one-fourth inch in diameter.①

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed a length of one-eighth inch.

(f) Diseases:

(i) Cedar rust infection which affects a total area of more than one-eighth inch in diameter.①

(ii) Sooty blotch or fly speck which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.①

(iii) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.①

(g) Insects:

(i) Any healed sting or healed stings which affect a total area of more than one-eighth inch in diameter including any encircling discolored rings.①

(ii) Worm holes.

(7) "Fairly well formed" means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

(8) "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the apples.

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end on a flat surface shall not be considered in determining whether or not an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin, shall be considered as damage.

(i) Russeting which is excessively rough on Roxburg Russet and other similar varieties.

(ii) Smooth net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when

① The area refers to that of a circle of the specified diameter.

the appearance is affected to a greater extent than the above amount permitted.

(iii) Smooth solid russeting, when an aggregate area of more than 5 percent of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the above amount permitted.

(iv) Slightly rough russeting which covers an aggregate area of more than one-half inch in diameter.①

(v) Rough russeting which exceeds one-fourth inch in diameter, unless it is well within the stem cavity or calyx basin and is not readily apparent.④

Any one of the following defects, or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(b) Sunburn or spray burn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting (8a).③

(d) Hail marks, drought spots, or other similar depressions or scars which are not superficial, or when such injury affects a total area of more than one-half inch in diameter.③

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Diseases:

(i) Scab spots which affect a total area of more than one-fourth inch in diameter.③

(ii) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.③

(iii) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.③

(iv) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.③

(g) Insects:

(i) Any healed sting or healed stings which affect a total area of more than three-sixteenths inch in diameter including any encircling discolored rings.③

(ii) Worm holes.

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① The area refers to that of a circle of the specified diameter.

SPOTS SHOWING DIAMETERS IN FRACTIONS OF AN INCH ARE ILLUSTRATED BELOW

One-eighth inch.

Three-sixteenths inch.

One-fourth inch.

Three-eighths inch.

One-half inch.

Three-fourths inch.

June 22, 1956.

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs*, vs. JOE DWYER, Director of Agriculture of the State of Washington, *Defendant.*	No. 43477 DEMURRER

COMES NOW the defendant, Joe Dwyer, Director of Agriculture of the State of Washington, through his attorneys, the Attorney General and Ernest M. Furnia, Assistant, and demurs to the amended complaint of the plaintiffs, Cecil C. Clark, et ux, on the following grounds:

I.

That the court has no jurisdiction of the defendant or the subject matter of the action.

II.

That the plaintiff has no legal capacity to sue.

III.

That there is another action pending between the same parties for the same cause.

IV.

That there is a defect of parties plaintiff or defendant.

V.

That several causes of action have been improperly united.

VI.

That the complaint does not state facts sufficient to constitute a cause of action.

VII.

That the action has not been commenced within the time limited by law.

Dated this 11th day of June, 1959.

JOHN J. O'CONNELL
Attorney General
s/Ernest M. Furnia
ERNEST M. FURNIA
Assistant Attorney General

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs*, vs. JOE DWYER, Director of Agriculture of the State of Washington, *Defendant*.	No. 43477 ORDER OVERRULING DEMURRER

THIS MATTER came on duly and regularly for hearing before the Honorable Lloyd L. Wiehl, Judge of the above-entitled Court, on the Demurrer of Defendant to Plaintiffs' Amended Complaint, the Plaintiffs appearing by their attorneys, Halverson, Applegate & McDonald and Donald H. Brazier, Jr., and the Defendant appearing by John J. O'Connell, Attorney General, and Ernest M. Furnia, Assistant Attorney General, and the Court having heard and considered the arguments of counsel and being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Demurrer of the Defendant to Plaintiffs' Amended Complaint be and the same is hereby overruled.

DONE IN OPEN COURT this 26th day of June, 1959.

s/ Lloyd L. Wiehl
Judge

Presented by:
s/C. W. Halverson
Of Halverson, Applegate & McDonald
and Donald H. Brazier, Jr.,
Attorneys for Plaintiffs.
OKAY AS TO FORM:
s/Ernest M. Furnia
Assistant Attorney General

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs,* vs. JOE DWYER, Director of Agriculture of the State of Washington, *Defendant.*	No. 43477 JUDGMENT

THIS CAUSE having come on for hearing on June 19, 1959, on the Defendant's demurrer to the Plaintiffs' amended complaint and the Court having heard the argument of counsel and having on June 26, 1959, entered an order overruling said Defendant's demurrer to Plaintiffs' amended complaint and the Defendant having been given an opportunity to plead further and said Defendant having declined to so plead and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Chapter 230, Session Laws of 1959, State of Washington, be and the same is hereby declared unconstitutional and void; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant be and he is hereby permanently enjoined from enforcing and carrying out the provisions of said Chapter 230, Session Laws of 1959, and

IT IS FURTHER ORDERED that the Plaintiffs be and they are hereby awarded judgment against the Defendant for their costs and disbursements herein expended and incurred.

DONE IN OPEN COURT this 27th day of July, 1959.

s/Lloyd L. Wiehl
Judge

Copy received, July 21, 1959
s/Ernest M. Furnia
Assistant Attorney General

Presented by:
s/C. W. Halverson
Of Halverson, Applegate & McDonald
Attorneys for Plaintiff.

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs,* vs. JOE DWYER, Director of Agriculture of the State of Washington, *Defendant.*	No. 43477 NOTICE OF APPEAL

To Cecil C. Clark and Catherine Clark, husband and wife, and to Halverson, Applegate & McDonald, their attorneys:

You and each of you are hereby notified that the defendant, Joe Dwyer, Director of Agriculture of the State of Washington, feeling himself aggrieved, does

hereby appeal to the Supreme Court of the State of Washington from each and every part of that certain judgment made and entered herein by the above-entitled court on July 27, 1959, whereby and wherein Chapter 230, Laws of 1959 was declared unconstitutional and void. defendant was permanently enjoined from enforcing and carrying out the provisions of Chapter 230, Laws of 1959, and plaintiffs were awarded costs and disbursements.

Dated at Olympia, Washington, this 29th day of July, 1959.

JOHN J. O'CONNELL
Attorney General
s/Ernest M. Furnia
Ernest M. Furnia
Assistant Attorney General
Temple of Justice
Olympia, Washington
Counsel for Defendant

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

May Session A. D. 1960

BE IT REMEMBERED, That at a regular session of the Supreme Court of the State of Washington, begun and holden at Olympia, on the second Monday of May, A. D. 1960, it being the ninth day of said month, among other, the following was had and done, to wit:

Friday, August 19, 1960

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Respondents*, vs. JOE DWYER, as Director of the Department of Agriculture of the State of Washington, *Appellant*.	No. 35280 Yakima County No. 43477 JUDGMENT

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Yakima County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 19th day of August, A. D. 1960, on motion of John J. O'Connell, Esquire, of counsel for appellant, considered, adjudged and decreed, that the demurrer of the said Superior Court should have been sustained and the action dismissed; and that the said Joe Dwyer, as Director of the Department of Agriculture of the State of Washington, have and recover of and from the said Cecil C. Clark and Catherine Clark, husband and wife, the costs of this action taxed and allowed at One hundred ninety-two and no 100 ($192.00) . . . Dollars, and that said execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

I, ROBERT HOLSTEIN, Clerk of the Supreme Court of the State of Washington, do hereby certify that the foregoing is a true copy of the Judgment and Decree in said cause, as the same now remains of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 19th day of August, A. D. 1960.

s/Robert Holstein
ROBERT HOLSTEIN,
Clerk of the Supreme Court,
State of Washington.

(Here follows en banc opinion of Supreme Court of the State of Washington, reprinted in full as Appendix "A.")

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Plaintiffs,* vs. JOE DWYER, Director of Agriculture of the State of Washington, *Defendant.*	No. 43477 JUDGMENT ON REMITTITUR

THIS CAUSE coming on duly and regularly for hearing, the parties hereto appearing by their respective counsel of record herein, and it appearing to the court that the defendant heretofore demurred to plaintiffs' amended complaint and that an order was entered overruling said defendant's demurrer and the defendant having declined to plead further, judgment was entered in the above entitled case on the 27th day of July, 1959 in favor of plaintiffs and against the defendant, and it further appearing that said judgment was duly appealed to the Supreme Court of the State of Washington and after hearing the Supreme Court reversed said judgment, all of which more fully appears in the remittitur on file

herein, and it further appearing that said plaintiffs have been given an opportunity to plead further and said plaintiffs have declined to so plead and the court having considered all of the records and files herein and being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment heretofore and on the 27th day of July, 1959, duly entered in the above entitled court and cause be and the same is hereby reversed and set aside, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs' complaint and plaintiffs' amended complaint be and they are hereby dismissed with prejudice, and

IT IS FURTHER ORDERED that the defendant be and he is hereby entitled to recover judgment against the plaintiffs for defendant's costs to be taxed herein.

DONE IN OPEN COURT this 11th day of October, 1960.

s/ Lloyd L. Wiehl
Judge

Presented by:
s/Alan A. McDonald
Of Halverson, Applegate & McDonald
and Walter E. Weeks, Jr.
Attorneys for Plaintiffs
APPROVED:
s/Philip M. Parkes
Assistant Attorney General

In the Supreme Court of the United States

OCTOBER TERM, 1950.

NO. 531

CECIL C. CLARK and CATHERINE CLARK, husband and wife,

v.

JOE DWYER, Director of [illegible] of Washington.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENT IN OPPOSITION

[illegible]

ERRATUM

Cecil C. Clark and Catherine Clark,
husband and wife,

Petitioners,

v.

Joe Dwyer, Director of Agriculture
of the State of Washington,

Respondent.

Brief for Respondent in Opposition
to Petition for a Writ of Certiorari
October Term, 1960
No. ~~530~~ 531

In the first line of page 12, the word "never" should be stricken, and therefore the sentence beginning in the next to the last line of page 11 should read as follows:

Petitioners alleged that they were engaged in the growing of red and partial red varieties of apples substantial quantities of which reached interstate commerce.

In the Supreme Court of the United States

OCTOBER TERM, 1960

NO. 531

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Petitioners*,

v.

JOE DWYER, Director of Agriculture of the State of Washington, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENT IN OPPOSITION

JOHN J. O'CONNELL,
Attorney General.

ERNEST M. FURNIA,
Assistant Attorney General.

RICHARD M. MONTECUCCO,
Assistant Attorney General.
Counsel for Respondent.

Office and Post Office Address: Temple of Justice, Olympia, Wash.

STATE PRINTING PLANT, OLYMPIA, WASH.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

NO. 531

CECIL C. CLARK and CATHERINE CLARK, husband and wife, *Petitioners*,

v.

JOE DWYER, Director of Agriculture of the State of Washington, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of the State of Washington (App. A of Petition) is reported at 156 Washington Decisions 440. Denial of the petition for rehearing (App. B of Petition, p. 39) is reported at 156 Washington Decisions 557.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition, except for one point: Petitioners state that they believe jurisdiction is conferred on this Court by 28 U. S. C., Section 1257 (2). However, subsection (2) of this section relates to appeals from state courts, whereas Petitioners apparently are proceeding under subsection (3) of this section, relating to petitions for a writ of certiorari.

QUESTIONS PRESENTED

I

Whether, when an amendment to a statute setting forth the grades for apples provides that all or a substantial portion of those apples previously classified as "C grade" are now to be classified as "cull," and when another statute provides that "cull" apples may be shipped to places other than processing plants only when packed in containers which clearly show that the apples contained therein are culls, and when, as a consequence, there is a considerable loss in the market value of the reclassified apples, this statute results in a deprivation of property without due process of law, or whether this statute, designed by the state legislature to better the competitive position of Washington apples, constitutes a valid exercise of the state police power.

II

Whether the aforementioned amendment constitutes a denial of equal protection of the laws, in that the reclassification affects only red and partial red varieties, which constitute 95% of the Washington apple crop, and not green and yellow varieties, which constitute the remaining 5%.

III

Whether the statutory reclassification of former "C grade" apples into a "cull" grade, in view of a further statutory requirement that such apples be labeled and packed as culls before shipment to places other than processing plants, imposes an improper burden on interstate commerce.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment XIV, section 1, of the United States Constitution which reads, in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, section 8, of the United States Constitution which reads in pertinent part:

> "The congress shall have power * * *
> "To regulate commerce with foreign na-

tions, and among the several states, and with the Indian tribes; * * *"

Chapter 230, Laws of 1959, the questioned enactment consisting of two sections, and which is now codified in sections 15.16.080 and 15.16.085 Revised Code of Washington (RCW) is set forth in the Statement p. 9, as are section 1, chapter 222, Laws of 1939, the predecessor of the questioned statute, and RCW 15.16.160, p. 11.

STATEMENT

Petitioners instituted this action for themselves and others similarly situated by complaint seeking a declaratory judgment that chapter 230, Laws of 1959, is unconstitutional under both the state and federal constitutions. To an amended complaint (App. B of Petition, pp. 25-34) Respondent demurred (App. B of Petition, pp. 35, 36). The demurrer was overruled (App. B of Petition, p. 36). Respondent declined to plead further and judgment was entered declaring the legislation unconstitutional and permanently enjoining Respondent from enforcing it (App. B of Petition, pp. 37, 38). Respondent entered timely notice of appeal (App. B of Petition, pp. 38, 39). Upon appeal the Supreme Court of the State of Washington reversed the lower court, holding that the demurrer should have been sustained because the complaint failed to state facts sufficient to exhibit that chapter 230, Laws of 1959, was unconstitutional.

Prior to enactment of the questioned legislation, the grades of apples were established in section 1, chapter 222, Laws of 1939, which read, in part:

> "It shall be unlawful for any person, firm, corporation, trust, association, co-operative or other business unit or device to pack, ship or sell apples unless such apples are sold, packed and graded in compliance with the general rules and regulations made, adopted and promulgated from time to time by the Director of Agriculture pursuant to section 4 of chapter 27 of the Laws of 1931. * * * Within sixty (60) days after the taking effect of this act general rules and regulations shall be adopted and promulgated defining and establishing the following grades:
>
> (a) Extra Fancy
> (b) Fancy
> (c) C grade
> (d) Culls
> (e) Infested Culls."

These classifications applied to all apples. Regulations defining these grades are contained in the booklet "Washington Standards for Apples," incorporated by reference in the amended complaint (App. B of Petition, p. 34).

Chapter 230, Laws of 1959, states as follows:

> "Section 1. Section 1, chapter 222, Laws of 1939, and RCW 15.16.080 are each amended to read as follows:
>
> "The director shall adopt and promulgate rules and regulations establishing the following grades of apples:
>
> "For green and yellow varieties: (1) Ex-

tra fancy, (2) fancy, (3) C grade, (4) culls, and (5) infected culls. For red and partial red varieties: (1) Extra fancy, (2) fancy, (3) culls, and (4) infected culls.

"No person shall pack, sell, or ship apples unless the same comply with the rules, regulations and grades adopted pursuant to RCW 15.16.010.

"Sec. 2. There is added to chapter 15.16 RCW a new section to read as follows:

"The director when establishing standards of color requirements for red varieties and partial red varieties of apples shall establish color standards for such varieties which are not less than the following:

1. Arkansas Black .....Fifteen percent
2. Spitzenburg (Esopus) ...Fifteen percent
3. Winesap .....Fifteen percent
4. King David .....Fifteen percent
5. Delicious .....Twenty percent
6. Staymen Winesap .....Ten percent
7. Vanderpool .....Ten percent
8. Black Twig .....Ten percent
9. Jonathan .....Ten percent
10. McIntosh .....Ten percent
11. Rome .....Ten percent
12. Red sport varieties .....Twenty percent

"Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties."

By section 1 of this act the C grade for red and partial red varieties of apples was eliminated, but it was retained for the green and yellow varieties of apples. Section 2 sets the minimum color require-

ments to which the fancy grade of red and partial red varieties may be set. Adoption of the minimum color requirements would result in a five percent change downward from existing color requirements for apples classified fancy.

If the minimum color requirements were adopted approximately two-thirds of the red and partial red varieties of apples now classified as C grade would pass into the cull classification. The remainder would be graded fancy. Otherwise, all of the former C grade red and partial red varieties of apples would become culls.

Handling of cull apples is restricted by operation of RCW 15.16.160 which reads:

> "*No person shall* buy, sell, offer for sale, ship, or transport any apples to or for market unless the same shall have been graded and comply with all grading requirements; and if the apples are culls, unless every container, label, bill of lading, invoice, memorandum and other document describes and defines their grade, variety and size; *nor ship or transport culls out of the area of their production, except to processing plants, unless they are packed in one-bushel baskets, ring-faced and lidded, and the name 'culls' appears on the top and bottom of each container and any labels thereon in clear, legible letters at least two and one-half inches high. Apples in the ring-face shall be representative of the contents, as to size and quality.*" (Emphasis supplied.)

Petitioners alleged that they were engaged in the growing of red and partial red varieties of ap-

ples substantial quantities of which never reached interstate commerce. The complaint avers that the placing of all or a substantial portion of those apples into the cull classification under the restrictions of RCW 15.16.160, which statute Petitioners do not attack, will render the market value thereof seventy-five percent less than if the reclassification had not been effected.

It was further alleged that the state of Washington produces and ships more apples than any other state. According to the state Department of Agriculture, growers in Washington produced approximately 33,000,000 bushels of apples valued at $73,000,000 in 1957. In 1958, 30,000,000 bushels of apples valued at $75,000,000 were produced, and similar results were expected in 1959. Approximately ninety-five percent of the apples grown in Washington are red and partial red varieties; the remaining five percent are green and yellow varieties.

Of the red and partial red varieties of apples produced during the 1957 to 1958 crop year, 4,250,000 boxes of C grade were placed into interstate commerce. For the crop year of 1958 to 1959 the figure was 2,500,000 boxes. At the time of filing the complaint 264,708 boxes of C grade red and partial red varieties of apples remained. (Petitioners state that this last group reached interstate commerce. Petition, p. 9.) The average price for these apples was two dollars a box or more.

Weather conditions and relative elevation, not inferior farming practices, are largely responsible for production of red and partial red varieties of apples classified as C grade. C grade apples have less color than have apples classified as fancy or extra fancy; it is alleged that this is the basic difference. The regulations show also differences of shape and freedom from damage. More C grade apples are produced in the southern portion of Washington than in the northern portion because apples mature earlier in the southern portion and have less opportunity to color.

C grade apples are as wholesome and healthful as the higher grades. They store and ship equally well. Petitioners claim that marketing red and partial red varieties of C grade apples as allowed prior to the reclassification—in standard apple boxes—is not detrimental to public safety, health, morals, or convenience, nor does it work a fraud upon the public.

ARGUMENT

The reclassification of apples by chapter 230, Laws of 1959, will result in placing an undetermined quantity of red and partial red varieties of apples grown by Petitioners, and others, into a lower classification. A prior, and unassailed, statute dictates and thus regulates the method by which, or the place to which, the reclassified apples may be shipped.

Petitioners do not complain of the authority of the legislature to classify apples generally. They

do not complain of the statute restricting the handling of the reclassified apples. Rather, the primary complaint is that through this reclassification a portion of their apples will be reduced in value.

The Supreme Court of the State of Washington held that this measure was a function of the state police power. In applying the attendant presumption that special facts existed to explain the validity of the enactment, the lower court concluded that the measure may well have been deemed necessary to maintain or better the industry economically by protecting the reputation of Washington apples and by improving the competitive position of such apples in the national market.

As we shall show, this decision by the state court is clearly correct, is in complete harmony with the decisions of this Court, and presents no federal question worthy of review.

I

THERE IS NO CONFLICT OF DECISIONS

Petitioners claim a conflict of the decision of the lower court with two decisions of this court: *Baldwin v. G. A. F. Seelig, Inc.*, 294 U. S. 511: and *Hood v. DuMond*, 366 U. S. 525. Both of those cases determined state regulatory measures to be invalid as undue burdens on interstate commerce.

But an examination of the regulatory measures involved in these two cases will show that the cases in no way conflict with the decision in the instant

case. In *Baldwin v. G. A. F. Seelig, Inc.*, 294 U. S. 511, New York had erected a barrier against out-of-state milk sellers who wished to sell in the New York market; in the instant case, there is no attempt to prevent out-of-state sellers from coming into the Washington State market, and the *Baldwin* case is therefore not in point. In *Hood v. DuMond*, 366 U. S. 525, New York discriminated against an out-of-state buyer who wished to buy milk in New York for resale in other states, and this discrimination resulted in the buyer being unable to buy milk in New York. In the instant case there is no discrimination against out-of-state buyers, and such buyers are completely free to buy Washington apples. Accordingly, *Hood v. DuMond*, 366 U. S. 525, is also not in point. It appears overly fanciful for the Petitioners to maintain that the statute in question erects any sort of barriers to interstate commerce, as did the regulatory measures in the two cases on which they rely; the statute in question in the instant case merely reclassifies apples produced within the state. It in no way restricts the freedom of out-of-state purchasers.

II

THERE IS NO SUBSTANTIAL FEDERAL QUESTION

Petitioners submit that "in the delicate difference of the shade of two apples" there is suspended an "age-old question" (Petition, p. 25) upon which this Court should pass. Respondent readily agrees that any question presented in this case is an old one. Indeed, any such question has been decided by this Court favorably to this respondent's position many times.

Petitioners' principal contention is that the police power of the state can be exercised to promote the general welfare only when it is primarily directed toward the health, safety, or morals of its citizens, and cannot be directed primarily toward the betterment of one of its most vital industries, in this case the apple industry. Petitioners further contend that in the exercise of the police power for this latter purpose, the state is prevented from imposing regulations which, though they are assumed to better the industry as a whole, will incidentally result in a burden on a certain part of the industry, that is, a decrease in value of part of the apple crop of certain producers. (See Petition, pp. 6, 17.) Both contentions are without merit, and neither presents a federal question of substantial importance.

The police power extends to the entire property and business within the local jurisdiction. *Northwestern Fertilizing Co. v. Hyde Park*, 97 U. S. 659.

It may be utilized to the extent of even physically destroying private property where the legislature deems this necessary for protection of an important industry in the state. *Miller v. Schoene*, 276 U. S. 272. A state may, through the police power by taxation, regulate a business to adjust economic inequalities. *Great Atlantic and Pacific Tea Co. v. Grosjean*, 301 U. S. 412. It has been stated that the police power may be exercised within extremely broad limits to control practices within the business-labor field, and that it extends to all great public needs. *Day-Brite Lighting Co. v. Missouri*, 342 U. S. 421.

Indeed, the type of reasoning used by Petitioners to attempt to advance their theory of the police power by limiting it to the area of health, safety, and morals, attributing thereto a restricted meaning, was expressly disavowed in *Lincoln Federal Labor Union No. 19129, A. F. of L. v. Northwestern Iron and Metal Co.*, 335 U. S. 525.

In *Berman v. Parker*, 348 U. S. 26, 32, which declared valid an urban redevelopment act for the District of Columbia, it was stated:

> "We deal, in other words, with what has been known as the police power. An attempt to define its outer limits is fruitless for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the

> legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia or the States legislating concerning local affairs."

State regulation of the milk industry within its borders specifically for control and betterment of economic conditions in that industry are valid. *Nebbia v. New York*, 291 U. S. 502; *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346. And, legislation resulting in quantity and, to a degree, quality control between producers and handlers of agricultural produce by state government was approved as being within state police power in *Parker v. Brown*, 317 U. S. 341. The controls instituted for economic reasons by California as shown in the latter case are obviously of much greater impact than the regulation by reclassification existing in the instant case.

Petitioners appear to reason that while other industries are subject to police regulation by states to cure particular evils, that agricultural industries should be immune from control except for very limited purposes. We contend that the actual judicially recognized practice has been otherwise. This court has said in *Tigner v. Texas*, 310 U. S. 141, at p. 145:

> "Since *Connolly's* case [*Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540.] was decided, nearly forty years ago, an impressive legisla-

tive movement bears witness to general acceptance of the view that the difference between agriculture and industry call for differentiation in the formulation of public policy. The states as well as the United States have sanctioned cooperative action by farmers; have restricted their amenability to the anti-trust laws; have relieved their organizations from taxation. [Citing federal legislation.] Such expressions of legislative policy have withstood challenge in the courts. *Liberty Warehouse Co. v. Burley Tobacco Growers; Co-op Marketing Asso.*, 276 U. S. 71. Congress and the states have sometimes thought it necessary to control the supply and price of agricultural commodities within their respective spheres of jurisdiction, and the constitutional validity of these measures has been sustained. *Mulford v. Smith*, 307 U. S. 38; *United States v. Rock Royal Co-operative*, 307 U. S. 533; *Nebbia v. New York*, 291 U. S. 502.

"At the core of all these enactments lies a conception of price and production policy for agriculture very different from that which underlies the demands made upon industry and commerce by anti-trust laws. These various measures are manifestations of the fact that in our national economy agriculture expresses functions and forces different from other elements in the total economic process. * * *"

It is submitted that the decision of the Supreme Court of the State of Washington is consistent with the views and opinions of this Court.

THE DECISION BELOW IS CORRECT

The court below concluded that chapter 230, Laws of 1959, constituted an exercise of the police power. In so concluding, the rebuttable presumption of the constitutionality of the legislation was adopted placing the burden on Petitioners to establish the invalidity of the act. This Court recognizes and utilizes that presumption. *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194; *Pacific States Box & Basket Co. v. White*, 296 U. S. 176.

It is alleged that by the reclassification, the value of the apples of red and partial red varieties is seriously affected. This is because of operation of another statute dictating that cull apples may only be shipped to a processor or shipped elsewhere in bushel baskets. Branding the produce as culls is not in itself necessarily bad. *Detweiler v. Welch* (C. C. A. 9th), 46 F. (2d) 75, 73 A. L. R. 1440 (1930). And, that some will suffer pecuniary damage as a result of a legislative enactment falling within the police power is not sufficient to render it invalid. *Chicago, B. & Q. R. Co. v. Illinois ex rel. Grimwood*, 200 U. S. 560.

The court below found a state of facts that could reasonably be presumed to exist which would justify this legislation and sustain the validity of the act in question. This is consistent with this Court's view. *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194; *Pacific States Box & Basket Co. v. White*, 296 U. S. 176; *Munn v. Illinois*, 94 U. S. 113. It was

assumed that the act was passed to aid economically the apple industry by maintaining or bettering the reputation of Washington grown apples. This was declared proper relying on *Sligh v. Kirkwood*, 273 U. S. 52. That case held a state statute valid that prohibited shipment of immature or otherwise unfit fruit. It was judicially assumed that the measure would protect the health of the public in the state of enactment, and would protect the reputation of the fruit on foreign markets.

The latter purpose was deemed a sufficient one for regulating upon agricultural produce. Indeed, the legislative plan of quantity controls upon agricultural products declared constitutional in *Parker v. Brown*, 317 U. S. 341, was of much greater restriction than that imposed by chapter 230, Laws of 1959. Thus, the Supreme Court of the State of Washington was correct in holding that the questioned enactment was not shown to deny property without due process of law.

It is claimed that equal protection of the laws is denied to those whose apples will become reclassified in that they are as healthy and wholesome as higher grade apples that may be shipped in standard apple boxes, the usual method, and that the green and yellow varieties of apples were not similarly to be reclassified. The lower court again properly relied upon the presumption of constitutionality and assumed that facts could exist to validate such an act. *Morey v. Doud*, 354 U. S. 457. Indeed, this Court

has repeatedly held that the legislature of a state has wide discretion in determining classifications necessary to meet believed needs. *Terrace v. Thompson*, 263 U. S. 197; *Safeway Stores v. Oklahoma Retail Grocers Assoc.*, 360 U. S. 334. That the statute could have reclassified green and yellow varieties also, and thus have been broader in scope, does not render it invalid. *Goessert v. Cleary*, 335 U. S. 464.

The lower court also properly held that police power legislation to promote public welfare, as the act in question was held to accomplish, could regulate regarding the disposal of products of the state which indirectly affected commerce when no congressional act was in conflict. The cases relied upon were: *Minnesota Rate Cases*, 230 U. S. 352; *Sligh v. Kirkwood*, 273 U. S. 52; *Detweiler v. Welch*, 46 F. (2d) 75 (9th C. C. A.).

Petitioners alleged that the grading of apples takes place at the time they are packed. (App. B of Petition, p. 26). Thus, operation of chapter 230, Laws of 1959, falls prior to shipment. It has been held that articles are not within interstate commerce until committed to a carrier for shipment. *Crescent Cotton Oil Co. v. Mississippi*, 257 U. S. 129. At best it may be said that by the reclassification and in view of the statute dictating the place or method of shipment of cull, previously C grade, red and partial red varieties of apples, chapter 230, Laws of 1959, has some indirect effect on interstate commerce. Nonetheless, it has been recognized that a

state may impose regulations of a more stringent effect than exists here which were termed to have substantial effect on interstate commerce. *Parker v. Brown*, 317 U. S. 341.

It is, therefore, contended that the decision of the Supreme Court of the State of Washington is correct on all issues.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN J. O'CONNELL,
Attorney General,

ERNEST M. FURNIA,
Assistant Attorney General,

RICHARD M. MONTECUCCO,
Assistant Attorney General,

Counsel for Respondent.